

**IN THE MATTER OF
AND
IN THE MATTER OF**

the Resource Management Act 1991

a resource consent application by B, M and R Sim for a six (6) lot subdivision and land use at 6 and 42 Leith Road, Okato, New Plymouth (SUB21/47781 and LUC22/48312).

**DECISION OF THE HEARING COMMISSIONER APPOINTED BY
NEW PLYMOUTH DISTRICT COUNCIL PURSUANT TO SECTION 34A OF
THE RESOURCE MANAGEMENT ACT 1991**

Independent Commissioner:

Mark St.Clair

28 June 2023

APPOINTMENTS

- [1] In May 2022, pursuant to Section 34A of the Resource Management Act 1991 (RMA), independent commissioner Mark St. Clair was appointed as a commissioner by New Plymouth District Council (NPDC) to hear and determine the application lodged by the “Applicant” B, M and R Sim for a six (6) lot subdivision at 6 and 42 Leith Road, Okato, New Plymouth.
- [2] As explained later in this decision, it was subsequently identified during the hearing process that a land use consent application was, at the time, also required. That application was made on 23 August 2022 and pursuant to Section 34A of the RMA, independent commissioner Mark St. Clair was, on 22 November 2022 appointed as a commissioner by NPDC to hear and determine the land use application as well.

PROCEDURAL MATTERS

Directions and procedural matters

- [3] For completeness I attach the minutes related to this hearing in Appendix 1.
- [4] The initial minutes related to the pre-circulation of Council’s Section 42A Report, all of the Applicant’s evidence, extension to the timeframe for filing of the Applicant’s evidence, and issues around Joint Witness Statement (JWS) and supplementary planning evidence from the Applicant and the Section 42A reporting officer.
- [5] I record that the Planning JWS (1 June 2023) identified that a land use consent was required in addition to the subdivision consent and the witnesses agreed that *“Consent is therefore sought as a Discretionary Activity under SASM-R9 and HH-R18.”*¹ At the commencement of the hearing on 8 June 2022, I advised the parties that no such application had been filed with Council, that an assessment of the potential effects of the land use had not been undertaken and nor had a notification assessment under section 95 of the RMA. In addition, I advised that the delegation to me for the hearing under section 34A of the RMA, only related to a subdivision consent. With all the parties present, and their agreement, I heard the subdivision matters on the 8th of June 2022, and then adjourned the hearing to provide the opportunity for the land use consent application to be filed.
- [6] I set the above out in Minute #5, placing the application on hold pursuant to Section 91 (1) of the RMA, requiring a land use application to be filed and the appropriate assessments under the RMA be undertaken.
- [7] Minute #6 addressed additional information from the Applicant and revised conditions from the planners.
- [8] Minute #7 (dated 23 November 2022) recorded the lodgement of the land use consent application, the section 95 of the RMA decision by the Council and the

¹ Planning Joint Witness Statement (JWS), dated 1 June 2022, Para 2.2

removal of the application from being on hold under section 91 of the RMA. I set out a timetable the section 42A report, Applicant's and any submitter evidence on the land use matters, including a request for the parties to comment on the National Policy Statement for Highly Productive Land which came into force on the 17 Oct 2022 and any revised conditions.

- [9] The remaining minutes were primarily procedural matters and timetabling for pre-circulated Section 42A reports and evidence, the reconvening and closing of the hearing.

Scope

- [10] As explained later in this decision, the application initial subdivision application was for:

- Lot 1 – 2.924ha;
- Lot 2 of 5555m²;
- Lot 3 of 5500m²;
- Lot 4 of 4271m² containing the existing dwelling near the corner of Leith Road and SH45;
- Lot 5 – 1.01ha containing existing dwelling in the centre of the site.
- Lot 6 of 32.133ha (to be amalgamated with Lot 2 DP 18489 for a combined area of 41.43ha).

- [11] At the reconvened hearing of 19 May 2023, the application (which I refer to as the “revised proposal”) to be considered was for a subdivision consent (no land use consent was triggered) as follows;

- Lot 1 – 2.924ha;
- Lot 4 - 2130m² containing the existing dwelling near the corner of Leith Road and SH45;
- Lot 5 – 1.03ha formerly containing existing dwelling in the centre of the site.
- Lot 6 of 32.9ha (to be amalgamated with Lot 2 DP 18489 for a combined area of 42.7ha).

- [12] The revised application to be considered is a reduction in the number lots and a change to the size of a number the proposed lots. No issues as to the “scope” of the revised proposal were drawn to my attention.

Site visit

- [13] As explained the hearing, I undertook a site visit on 8 June 2022 to familiarise myself with the subject site and the surrounding environment. I was not accompanied on the site visit by any of the parties. I did not enter the subject property.

Decision format

- [14] I have had regard to the requirements of Section 113 of the RMA when preparing this decision. In particular I note and have acted in accordance with Section 113(3) which states:

*“A decision prepared under subsection (1) may, -
(a) instead of repeating material, cross-refer to all or a part of -
(i) the assessment of environmental effects provided by the applicant concerned:
(ii) any report prepared under section 41 C, 42A, or 92; or
(b) adopt all or a part of the assessment or report, and cross-refer to the material accordingly.”*

[15] During the course of the hearing it became apparent that there were particular issues in relation to the relevant rural character and amenity effects, and the National Policy Statement for Highly Productive Land 2022 (NPS-HPL). I therefore focused my questions on these matters. I have consequently focused my decision on those same matters.

THE APPLICATION PROCESS

[16] Juffermans Surveyors Ltd, filed an application on behalf of B, M and R Sim for a six (6) lot subdivision at 6 and 42 Leith Road, Okato, New Plymouth (the subject site) dated 7 May 2021.

[17] On 15 June 2021, NPDC requested further information on a number of matters including the request for a landscape and visual assessment.

[18] The consent application was fully publicly notified on 21 January 2022 with the submission period closing on 22 February 2022.

[19] NPDC received one submission, from Fire and Emergency New Zealand (FENZ), in opposition to the proposal.

[20] A summary of the submission was detailed in the Section 42A report² prepared by Ms Buttimore. Communications between the Applicant and FENZ resulted in an agreement by the Applicant to offer a condition of a consent notice to address dedicated measures for fire safety. As consequence FENZ indicated that they did not wish to be heard.

[21] I record that I read the submission in full and I have had regard to it as part of my evaluation of the application.

[22] As set out above, the subdivision application was placed on hold under section 91 of the RMA on 8 June 2022 to allow for a land use application to 'catch-up' to the subdivision application. The land use application was filed on 23 August 2022. NPDC issued a section 92 of the RMA request for further information, with a full response on all matters received by Council on 14 October 2022³. The land use application was determined to be able to proceed on a non-notified basis on 20 October 2022, by Council officers under delegated authority.

[23] A section 42A report prepared by Ms Buttimore, dated 6 December 2022, addressed the land use components of the application for the 6 Lot subdivision. That section 42A report included an assessment of the National Policy Statement for Highly Productive Land, with a recommendation that the application should be declined.

² Section 42A Report, Ms L Buttimore, dated 16 May 2022, Paras 27 - 29

³ Section 42A Report, Ms L Buttimore, dated 6 December 2022, Paras 11 - 15

- [24] The Applicant filed evidence on the 24 January 2023, with a revised application which no longer required a land use consent and the subdivision application (the revised proposal) was reduced to a subdivision and boundary adjustment resulting in two (2) new lots (Lot 1 and Lot 4), a boundary adjustment for proposed Lot 5 and a balance Lot 6. For completeness I record that Lots 2 and 3 from the original subdivision application were removed.
- [25] Ms Buttimore, helpfully prepared a revised section 42A report, dated 17 March 2023, to address the revised proposal.
- [26] Rebuttal evidence was filed by the Applicant dated 21 April 2023.
- [27] For completeness, I record that the Applicant obtained written approval from the owners and occupiers of 19, 43 and 92 Leith Road for the subdivision application. In addition, Nga Mahanga a Tairi Hapu provided written material supporting the land use application and accessways for proposed Lots 2 and 3.
- [28] As noted above, all expert evidence was pre-circulated in accordance with Section 103B of the RMA. I record that I read all of the evidence and have taken it into account as part of my evaluation of the application.

THE HEARING and ATTENDANCES

- [29] The initial hearing was held in the Ngāmotu Room at the New Plymouth District Council Offices, 84 Liardet Street, New Plymouth on 8 June 2022, commencing at 10:00am.
- [30] I adjourned the hearing at 4.11pm on 8 June 2022, in order to provide for land use application to be filed, section 95 of the RMA decision to be made, the delegation to hear and determine the land use application. The hearing reconvened at 9.00am on 19th May 2023, in the New Plymouth Room of the Council offices. I adjourned the hearing on the same day at 4.10pm to allow for the planners to conference on conditions and for the Applicant's right of reply in writing.
- [31] The revised conditions from the planners and the reply statement from the Applicant was duly filed and distributed to the parties.
- [32] Having considered that I had all the information I required, I closed the hearing by way of minute (Minute #13) on 7 June 2023.
- [33] The attendances at the hearing were as follows:

Applicant

- [34] For the Applicant on 8 June 2022:
- Mr Scott Grieve - Counsel for the Applicant
 - Mr Richard Bain – Consultant Landscape Architect - Bluemarble.
 - Ms M Dravitzki – Consultant Landscape Architect
 - Ms Z Gerente – Consultant Planner – Landpro Ltd (Ms Gerente only prepared and presented planning evidence at the initial hearing)

[35] For the Applicant at reconvened hearing on 19 May 2023:

- Mr Scott Grieve - Counsel for the Applicant
- Mr James Allen – Agricultural Consultant – AgFirst Consultants New Zealand Ltd
- Ms Kathryn Hooper - Consultant Planner – Landpro Ltd

Council officers

[36] The following consultants were in attendance and responded to matters raised at the 8 June 2022 hearing;

- Ms Laura Buttimore – Consultant Planner for NPDC.
- Ms Erin Griffiths – Consultant Landscape Architect, Natural Capital.

[37] Ms Buttimore was also in attendance and responded to matters raised at the 19 May 2023 reconvened hearing.

[38] Section 42A officer's reports were prepared by Ms Buttimore, consultant planner for NPDC.

[39] I was assisted in an administrative capacity by Ms Jane Hickmott, Hearings' Administrator, at NPDC.

[40] The parties provided additional material in response to my directions and questions at the hearing. In addition, Joint Witness Statements were prepared by the Landscape Architect witnesses (dated 1 June 2021) and the planning witnesses (Ms Gernete and Ms Buttimore dated 1 June 2021). For completeness I record that Ms Buttimore completed an updated dated section 42A reports for land use consent application and the revised application for the reduction in the number of proposed lots. I also record that the evidence of Mr Allen and Ms Hooper was focused on the addressing aspects of the National Policy Statement for Highly Productive Land. A final JWS from the planners as to conditions was filed on 26 May 2023.

[41] All of the material presented by the above parties is held on file at NPDC. I took my own notes of the verbal presentations and any answers to my questions. For the sake of brevity, I do not repeat that material in the decision. However, I do refer to relevant matters raised in the material in subsequent parts of the decision.

LEGAL DESCRIPTION AND ZONING

[42] The property ("**the subject site**") is legally described as follows:

Legal Description:	Part Lot 1 DP 8787 and Lot 1 DP 19869
Site Area:	37 Ha more or less and 2,463m ² respectively
Site Address:	6 Leith Road and 42 Leith Road, Okato, New Plymouth
District Plan Zone:	Operative District Plan – Rural Environment Area Proposed District Plan – Rural Production Zone

THE PROPOSAL

[43] The proposal was described in the applications⁴ and the Section 42A officer's reports prepared by Ms Buttimore.⁵ By way of overview I have included a brief description of the proposal here, including amendments made during the course of the hearing.

[44] The Applicant's proposal at the commencement of the hearing was, in summary to:

- to undertake a subdivision as follows:

Lot 1 – 2.924ha;

Lot 2 - 5555m²;

Lot 3 - 5500m²;

Lot 4 - 4271m² containing the existing dwelling near the corner of Leith Road and SH45;

Lot 5 – 1.01ha containing existing dwelling in the centre of the site.

Lot 6 - 32.133ha (to be amalgamated with Lot 2 DP 18489 for a combined area of 41.43ha).

[45] On 10 June 2022, Counsel for the Applicant submitted amended plans showing complying access ways to proposed Lots 2 and 3.

[46] The land use application filed on 23 August 2022, includes:

- Proposal to construct a habitable building on proposed Lot 5 of SUB21/47781 that will be 7.8m from its southwestern boundary at a similar location and scale to the dwelling recently removed; and
- *Earthworks for the formation of vehicles crossing for proposed Lot 2.*

[47] In the planning evidence filed on behalf of the Applicant dated 24 January 2023, the proposal was amended by the Applicant to a boundary adjustment and 3 lot subdivision;

- Lot 1 – 2.924ha;

- Lot 4 - 2130m² containing the existing dwelling near the corner of Leith Road and SH45;

- Lot 5 – 1.03ha formerly containing existing dwelling in the centre of the site.

- Lot 6 of 32.9ha (to be amalgamated with Lot 2 DP 18489 for a combined area of 42.7ha).

[48] This new proposal amended the proposed boundary of proposed Lot 5 such that the proposed building platform no longer encroached into the side yard and that the proposed Lots 2 and 3 from the original application were removed. This then was the proposal I considered at the reconvened hearing, referred to as the 'revised proposal' and confirmed as much with Applicant's Counsel and the Section 42A Reporting Planner.

⁴ Application for a Resource Consent for Boundary Change and 5 Lot Subdivision, dated 7 May 2021, Juffermans Surveyors Ltd, Pages 11 -17, and Application for Resource Consent for Land Use Consent, dated 23 August 2022

⁵ Section 42A Report, Ms L Buttimore, dated 16 May 2022, Paras 7 – 11 and Section 42A Report, Ms L Buttimore, dated 6 December 2022, Paras 8 - 24

[49] For completeness I record that at the close of hearing the Applicant offered the following mitigation measures as part of the application package from the original subdivision application⁶;

Lots 1, 4 and 5

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

Lot 6

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

For all lots

- Consent notice to ensure each new dwelling on each allotment is required to provide dedicated firefighting water supply.

[50] The above list was confirmed by Mr Grieve at the reconvened hearing. Additional mitigation measures put forward by the Applicant at the hearing and in the reply statement, included;

- Restricting the location of any habitable dwelling on Lot 1 to area shown on drawing Titled Lots 1, 4, 5 and 6 Being a Proposed Subdivision of Pt Lot 1 DP 8787 and Lot 1 DP 19869, Drawing No. 20198-3 Dated 2-/04-23 Rev 14.
- Removal of unused crossing point to proposed Lot 4.
- No further subdivision of Lots 1, 4, 5 or 6 while the land remains zoned Rural Production Zone or other similar rural zoning.

ACTIVITY STATUS

[51] At the reconvened hearing it was common ground that the applicable rules as Rur 78 and 79 under the NPDC Operative District Plan (ODP) which I have set out as follows:

Rur78

Parameter – where not created solely for NETWORK UTILITIES, ROADS, Reserves or access

Fully Discretionary

⁶ Section 42A Report, Ms L Buttimore, dated 17 March 2023, Para 19 and Mr S Grieve, Reply Statement, dated 2 June 2023, Para 27

Up to for ALLOTMENTS that are each less than 20ha from the PARENT TITLE provided there is a balance area remaining from the Computer Freehold Register subject to subdivision that exceeds 4ha in area.

Where the balance area is between 4ha and 20ha a further ALLOTMENT less than 20ha can be subdivided from the PARENT TITLE, provided there are no more than five ALLOTMENTS in total from the PARENT TITLE.

Rur79

Parameter – requirement to provide PRACTICABLE vehicular access to ALLOTMENTS from a ROAD, except where solely for NETWORK UTILITIES, ROADS, Reserves or reserves.*

Fully Discretionary

Does not meet the standards or terms for a controlled activity.

- [52] The other applicable subdivision rules Rur 81 and Rur 83 have a controlled activity status⁷. Ms Buttimore and Ms Hooper, in their presentations at the hearing in response to my questions agreed that Rur17 and Rur82 did not apply to the revised proposal and as such as land use consent was not required.
- [53] Under the NPDC Notified Version of the Proposed District Plan (PDP), consent for a subdivision of land containing a water body was required (WB-R5) as a controlled activity and subdivision is within 200m of an unverified Site of Significance to Māori (SASM) and Archaeological site (Site ID 197), consent is required as discretionary activity under SASM-R9 and HH-R18⁸.
- [54] I record that on the 13 May 2023, NPDC released the decisions of the independent hearing panel on the PDP. That “Proposed District Plan - Decisions Version” having immediate effect. Both Ms Hooper⁹ and Ms Buttimore¹⁰ addressed the “Proposed District Plan - Decisions Version” in evidence presented on the day of the reconvened hearing. As Ms Buttimore points out in that evidence, the application was lodged prior to 13 May 2023 and therefore is protected by S88A (1) from potentially changing the consenting requirements of the PDP decisions version.
- [55] Overall, the application is to be assessed as a discretionary activity.

STATUTORY PROVISIONS

- [56] This application falls to be considered as a discretionary activity under Part 2 and Sections 104 and 104B, of the RMA.

SECTION 104B OF THE RMA

- [57] As a discretionary activity, the application must be considered against the requirements of Section 104B, which states that:

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

⁷ Section 42A Report, Ms L Buttimore, dated 17 Mar 2023, Para 24

⁸ Section 42A Report, Ms L Buttimore, dated 17 Mar 2023, Para 29

⁹ Rebuttal Evidence, Ms K Hooper, dated 19 May 2023

¹⁰ Evidence, Ms L Buttimore, dated 19 May 2023

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.

PRINCIPAL ISSUES IN CONTENTION

[58] The principal issues in contention, as I have determined them, include:

- Application of permitted baseline
- Rural character and rural amenity effects;
- Traffic effects
- Cultural effects
- Heritage effects
- Cumulative effects

I address these issues in the following sections.

Application of permitted baseline

[59] The issue of the applicability of the permitted baseline was addressed in the evidence, and in response to my questions.

[60] Section 104 (2) of the RMA states that:

(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.

[61] Ms Gerente, Ms Hooper and Ms Buttimore agreed that the permitted baseline does not apply to the consideration of the subdivision application, the application not being a permitted activity.

[62] For the reasons set out in that evidence and the responses to my questions, I find that the application of the permitted baseline in this case is not appropriate.

Rural Character and Rural Amenity Effects

[63] Rural character and rural amenity effects were canvassed at the initial hearing in some detail. As a consequence of the revised proposal both M Bains, landscape architect for the Applicant and Ms Griffith landscape architect for the Council provided additional evidence assessing the revised proposal of effectively a 3 lot subdivision.

[64] In relation to the revised proposal, Ms Griffith's view was, in summary, that the removal of proposed Lots 2 & 3 meant many of her concerns regarding the subdivision and its cumulative effects had been avoided, providing the mitigation measures for Lots 1, 4, 5 & 6 were retained¹¹. Subject to some clarification of proposed conditions to address landscape matters, Ms Griffith concluded that the

¹¹ Landscape Peer Review Memo 3 – Ms E Griffith, dated 27 Feb 2023, Appendix 2 Section 42 Report dated 23 March 2023, Page 1, Para 4

landscape and visual effects of the proposal would be reduced to no more than minor effects¹².

- [65] Mr Bain agreed with Ms Griffith's assessment¹³.
- [66] The differences remaining between Ms Griffith and Mr Bain as to the revised proposal, relate to the specifics of the condition as the height of habitable and non-habitable dwellings. The witnesses agreed on the height of habitable buildings as single storey and a 6m maximum. Ms Griffith questioned if the conditions should also apply to non-habitable buildings. Mr Bain's view was that the condition should not apply to non-habitable buildings such as hay barns, tractor sheds and that such building appear appropriate in a working environment¹⁴. I agree.
- [67] Ms Buttimore, aligning with Ms Griffiths memo, was of the view the reduced subdivision scheme along-side the mitigation and recommended conditions would ensure the maintenance of rural character and amenity¹⁵. Ms Hooper's evidence records that she updated the conditions to reflect Mr Bains evidence including the restrictions on the location of a habitable dwelling on lot 1. Ms Hooper did not undertake any separate assessment as to rural and amenity effects.
- [68] Having considered all of the evidence on this matter, overall, I am satisfied in terms of resource management effects that the proposed subdivision does not create adverse rural character and rural amenity effects, that subject to conditions would be acceptable. I note the general agreement between the landscape witnesses and mitigation measures put forward by the Applicant, which subject to technical amendments I deem required to the conditions.

Traffic Effects

- [69] Ms Buttimore addressed traffic issues of the revised proposal, recording that a number of potential issues had been addressed in the preliminary hearing. Independent crossings for each dwelling were in place, and at the hearing, the Applicant agreed to the Council Development Engineers for removal of the unused crossing on Lot 4.
- [70] The existing crossing for Lots 4, 5 and 6 have already been through an approval process as fit for purpose. As to Lot 1, Mr Sanger Councils Development engineer considered that the crossing for Lot 1 could be addressed at building consent stage, providing that the crossing point is 160m from the intersection with Perth Street. In addition, while the crossing would then be within 10m of a vehicle crossing on the opposite side of Leith St, there would be no safety issues if visibility requirements were met.
- [71] I note that the proposal by the Applicant to restrict the location of any habitable dwelling on Lot 1 to area shown on drawing Titled Lots 1, 4, 5 and 6 Being a Proposed Subdivision of Pt Lot 1 DP 8787 and Lot 1 DP 19869, Drawing No. 20198-3 Dated 2-/04-23 Rev 14, would align with the requirement for the 160m separation for the Perth Street intersection.
- [72] Ms Buttimore also notes that there are no proposed changes to the access from Lot 6 to SH45 which has a Limited Access notification.

¹² Landscape Peer Review Memo 3 – Ms E Griffith, dated 27 Feb 2023, Appendix 2 Section 42 Report dated 23 March 2023, Page 3, Para 2

¹³ Rebuttal Evidence, Mr R Bain, dated 21 April 2023, Para 6

¹⁴ Rebuttal Evidence, Mr R Bain, dated 21 April 2023, Para 7

¹⁵ Section 42A Report, Ms L Buttimore, dated 21 Mar 2023, Para 43

- [73] Considering the evidence on traffic effects and matters set out above, I find there will no loss of amenity from the increased traffic as a result of the revised proposal.
- [74] In addition, the revised proposal in relation to traffic safety and the efficiency of the roading network can be mitigated through conditions on consent.

Building Platforms and servicing

- [75] It was uncontested that each proposed allotment could provide a stable flood free building platform and conditions to confirm suitability and the ability to provide for onsite water treatment. In addition, the Applicant has offered a consent notice conditions to ensure each new dwelling on each allotment is required to provide dedicated firefighting water supply. This addresses the matters raised in the submission of FENZ.

Waterbodies

- [76] Proposed Lot 6 contains a water body, which the Application offers a condition to ensure that the waterbodies are fenced and planted with native riparian planting. At the reconvened hearing, the Applicant outlined that the planting and fencing has already been undertaken.
- [77] Ms Buttimore considered that the offered condition would ensure the water bodies will preserve their natural character and have the opportunity to be enhanced through planting and fencing.
- [78] I heard no evidence to the contrary and accept the evidence and condition as offered.

Cultural Effects

- [79] Ms Buttimore outlined that the proposed subdivision site is within 200m radius of the Puketi Pa which is listed as both a SASM and Archaeological site under the PDP. The Applicant has engaged with Nga Mahanga A Tairi Hapu, the relevant mana whenua for the subject site, and provided correspondence between the Applicant and the hapū as part of the section 92 RMA response for the land use consent LUC22/48312.¹⁶
- [80] The Applicant offered a suite of conditions as to the subdivision proposal to address cultural effects including riparian planting of the water bodies, such that Ms Buttimore's conclusion was that any adverse cultural effects were avoided. I heard no other evidence to the contrary, so accept that assessment.

Archaeological Effects

- [81] Similarly, Ms Buttimore's section 42A Report recorded that the proposed subdivision is within extent of archaeological site 197 being Puketi Pa site. The Archaeological Assessment included with the application concluded that the subject site did not contain any archaeological sites and the application also included correspondence

¹⁶ Section 42A Report, Ms L Buttimore, dated 21 Mar 2023, Para 66

with Heritage New Zealand who had no concerns with the proposed subdivision, providing appropriate conditions as to accidental discovery protocols and were included¹⁷. With such conditions recommend by Ms Buttimore and agreed to by the Applicant, I find any potential archaeological effects acceptable.

Cumulative Effects

[82] Finally, Ms Buttimore also addressed cumulative effects as defined under section 3 of the RMA, opined that, "*the proposed application with the reduction in the number of allotments ensures, alongside sufficient mitigation that the proposal will not result in an adverse cumulative effect.*"¹⁸ Hearing no evidence to the contrary, I accept that assessment.

Effects Conclusion

[83] Having considered all of the evidence on the matter of effects, overall, I am satisfied in terms of resource management effects that the revised proposal does not create adverse effects, that subject to conditions would be acceptable.

Section 104 RMA

[84] Section 104 (1) of the RMA requires that a consent authority:

(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.

[85] I have discussed the significance of any actual or potential effects on the environment of allowing the activity in the above sections and turn now to the statutory provisions requirement of Section 104(1)(b).

National instruments

[86] It was common ground that there were no National Environmental Standards relevant to this application.

[87] It was equally common ground that the only relevant National Policy Statement was the National Policy Statement for Highly Productive Land (NPS-HLP), which came

¹⁷ Section 42A Report, Ms L Buttimore, dated 21 Mar 2023, Paras 68 - 69

¹⁸ Section 42A Report, Ms L Buttimore, dated 21 Mar 2023, Para 57

into force on 17 October 2022. Additionally, all the legal submissions and evidence agreed that part of the subject site to which the proposed subdivision related was classified as highly productive land and hence this application was captured by the NPS-HPL.

[88] At this point, I record that much of the evidence presented referenced the Ministry for the Environment's National Policy Statement for Highly Productive Land – Guide to Implementation – March 2023. In terms of my analysis of the evidence, I have relied on the decision of the Environment Court, in placing no weight on the Ministry for the Environment's National Policy Statement for Highly Productive Land – Guide to Implementation – March 2023¹⁹. In addition, as referenced in the same Environment Court decision, I have proceeded on the basis that the NPS-HPL provisions are among a wide range of matters that I must have regard to.²⁰

[89] Ms Buttimore identified the relevant objective and policies of the NPS-HPL²¹ and Ms Hooper agreed²². That objective and the policies being;

Objective: Highly productive land is protected for use in land-based primary production, both now and for future generations

Policy 4: The use of highly productive land for land-based primary production is prioritised and supported.

Policy 7: The subdivision of highly productive land is avoided, except as provided in this National Policy Statement.

Policy 8: Highly productive land is protected from inappropriate use and development.

Policy 9: Reverse sensitivity effects are managed so as not to constrain land-based primary production activities on highly productive land.

[90] In relation to policy 7, the policy is an avoidance policy, unless the NPS provides for the subdivision. The NPS addresses that matter in Clause 3.8, which I now turn to.

Clause 3.8 (1)

[91] The evidence presented at the reconvened hearing focused on Clause 3.8 of the NPS-HPL, clause (1) of which states;

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

a) The applicant demonstrates that the proposed lots will retain the overall productive capacity of the subject land over the long term:

b) The subdivision is on specified Māori land:

c) The subdivision is for specified infrastructure, or for defence facilities operated by the New Zealand Defence Force to meet its obligations under the Defence Act 1990, and there is a functional or operational need for the subdivision.

¹⁹ GS Gray and KM Sinclair-Gray v Dunedin City Council, [2023] NZEnvC 45 at [206]

²⁰ GS Gray and KM Sinclair-Gray v Dunedin City Council, [2023] NZEnvC 45 at [202]

²¹ Section 42A, L Buttimore, dated 6 Dec 2022, Para 46 and Section 42A, L Buttimore, dated 17 March 2023, Para 75

²² Evidence in Chief, K Hooper, dated 24 January 2023, Para 10

- [92] It was common ground that clause (1) b) and (1) c) do not apply to the revised proposal.
- [93] Ms Buttimore, in her section 42A report, in summary, undertook an analysis of the evidence of Mr Allen and Ms Hooper as it related to the NPS-HPL clause 3.8 (1) a), that they; *“... have incorrectly applied the ‘productive capacity’ test under Clause 3.8 and rely on the economic viability of each allotment rather than the required ‘potential productive capacity’. It is my opinion that the NPS-HPL clause 3.8 (1) (a) is not intended to be applied to rural lifestyle allotments as they cannot achieve the overall productive capacity of the land long term...”*²³
- [94] Ms Buttimore also assessed the productive capacity for each of the proposed lots 1, 4 and 5 which are all located on Highly Productive Land (HPL), in summary noting that there would be a loss in overall productive capacity of Lot 1 for any house and curtilage, that Lots 1 and 5 would be essentially rural lifestyle lots, and that there was no adequate assessment of the impact on productive capacity that Lots 1 and 5 would have on the overall capacity of the existing larger block (the balance lot). In response to matters raised in the hearing, Ms Buttimore changed her view that proposed Lot 4 was contrary to the NPS-HPL, following the questioning of Mr Allen. In conclusion Ms Buttimore was of the view that the retention of productive capacity had not been demonstrated and therefore, Clause 3.8 (1) a) was not satisfied. In response to my questions, Ms Buttimore remained of that view, albeit only as to proposed Lots 1 and 5, at the hearing.
- [95] Mr Allen, an agricultural consultant of some experience, provided two briefs of evidence²⁴ for the Applicant. That evidence assessed the productivity of the land including consideration of various land options, noting the removal of proposed Lots 2 and 3 which he considered to be lifestyle blocks of insufficient size to maintain productivity; opining that Lots 1 and 5 were of sufficient size to maintain land based primary production over the long term and further opined that a dwelling on proposed Lot 1 would not impact the efficiency of productive use of the lot. I spent some time questioning Mr Allen on the details of his evidence, the methodology of assessment applied, the details of farm practices, difference between productive capacity and economic viability and his conclusions. At this point I record that Mr Allen’s evidence was the only expert evidence presented as to the productive capacity of the revised proposal.
- [96] Ms Hooper, planner for the Applicant, relying on Mr Allen’s evidence, undertook a planning assessment of the productive capacity as to clause 3.8(1) (a) for the individual lots concluding, in summary, that the long-term capacity is maintained and therefore clause 3.8 (1) a) is met²⁵. Ms Hooper also addressed alternative land uses for smaller land holdings²⁶, concluding that in summary, that there would be an increase in the availability of HPL as a result of the revised proposal. I am not persuaded by that latter part of Ms Hooper’s evidence.
- [97] I also record that in order to address the potential of a dwelling on proposed Lot 1, that the Applicant proffered a condition and associated plan restricting any dwelling to the southern boundary of proposed Lot 1, which Mr Allen confirmed would not affect the productive capacity of the lot.

Finding

²³ Section 42A Report, Ms L Buttimore, dated 17 March 2023, Para 84

²⁴ Evidence in Chief, Mr J Allen, dated 24 January 2023, and Rebuttal Evidence dated 21 April 2023.

²⁵ Rebuttal Evidence, Ms K Hooper, dated 21 April 2023, Paras 58 - 59

²⁶ Rebuttal Evidence, Ms K Hooper, dated 21 April 2023, Paras 17 - 22 and 62

- [98] As I record above, Mr Allen’s evidence was unchallenged as to any countervailing expert evidence. I tested that evidence through questioning and in this case find that that Clause 3.8 (1) a) is satisfied in that the Applicant has demonstrated that the proposed lots will retain their overall productive capacity over the long term.
- [99] In reaching this conclusion, I record that Mr Allen in evidence and in response to my questioning appropriately assessed the three matters in the definition of “Productive capacity” in the NPS-HPL, namely;
- (a) Physical characteristics (such as soil types, properties and versatility); and
 - (b) Legal constraints (such as consent notices, local authority covenants, and easements) and;
 - (c) The size and shape of existing and proposed land parcels.

Clause 3.8 (2)

[100] Clause 3.8 (2) of the NPS – HPL states;

- (2) *Territorial authorities must take measures to ensure that any subdivision of highly productive land:*
 - (a) *avoids if possible, or otherwise mitigates, any potential cumulative loss of the availability and productive capacity of highly productive land in their district; and*
 - (b) *avoids if possible, or otherwise mitigates, any actual or potential reverse sensitivity effects on surrounding land-based primary production activities.*

[101] In relation to Clause 3.8 (2) (a) Ms Buttimore’s view was that even if the subdivision retained productive capacity, they could enable lifestyle subdivision on HPL²⁷. As to Clause 3.8 (2) (b) Ms Buttimore considered that it would be necessary to protect the existing adjacent land from reverse sensitivity effects including proposed Lot 6, noting that a no-complaints covenant could address this matter²⁸.

[102] In her initial evidence Ms Hooper’s view was that the scaling back of the proposal, removal of proposed Lots 2 and 3 and with the productive capacity retained, there was no potential for cumulative loss²⁹. Ms Hooper responding to the section 42A report in evidence, further considered that any subdivision that avoided the loss of production capacity should be of no concern in relation to precedent and that the proposal was unique, being affected by the NPS-HPL coming into effect, and the proposed subdivision being redesigned, which was a process impossible to replicate³⁰. As to reverse sensitivity, Ms Hooper recorded in evidence that the Applicant agreed to a no complaints covenant, which was confirmed by Mr Grieve in his submissions³¹.

Finding

[103] As to cumulative loss, 3.8 (2)(a) having already found above that the long term productive is retained, then by extension there is no cumulative loss. I observe that

²⁷ Section 42 A Report, Ms L Buttimore, dated 17 March 2023, Paras 100 - 101

²⁸ Section 42 A Report, Ms L Buttimore, dated 17 March 2023, Para 102

²⁹ Evidence in Chief, Ms K Hooper, dated 24 January 2023, Para 41

³⁰ Rebuttal Evidence, Ms K Hooper, dated 21 April 2023, Paras 82 - 83

³¹ Submissions, Mr S Grieve, dated 17 May 2023, Page 12

wording of Clause 3.8 (2) (a) refers to the *potential cumulative loss of the availability and productive capacity of highly productive land (my emphasis)* and not the actual use of the land.

[104] In relation to Clause 3.8 (2) (b) I find that the reserve sensitivity issue is addressed via the condition proffered which is a form of mitigation, noting that I have already found above, that the long-term production capacity is retained.

Clause 3.8 (3) and (4)

[105] Ms Buttimore considered that Clause 3.8 (3) did not apply to the revised proposal, given the clause related to the Te Ture Whenua Māori Act 1993. I heard nothing to the contrary so accept that evidence.

[106] Clause 3.8 (4) states;

Territorial authorities must include objectives, policies and rules in their district plans to give effect to this clause.

[107] Ms Buttimore's view was that this sub clause was not relevant to the proposed subdivision, as this process will occur in the future, the ODP and PDP yet to give direct effect to the NPS³². Again, I heard nothing to the contrary so accept that evidence.

Clause 3.9

[108] Clause 3.9, relates to protecting highly productive land from in appropriate use and development. The only specific mention of this clause was oblique references from Ms Hooper illustrating the difference between Clause 3.9 to 3.8 or the need for territorial authorities to take measures via their district plans.³³ Ms Buttimore did reference land use, in particular rural lifestyle uses which she considered inappropriate. However, this was without direct reference to Clause 3.9. Ms Hooper, specifically addressing Policy 8 of the NPS-HPL was of the view that by demonstrating the retention of the productive capacity as to Clause 3.8, the use and development of the land was also appropriate.³⁴ I concur that I have already found that the proposed subdivision will retain the overall productive capacity over the long term. In addition, I note that land use is governed by the Rural zone provisions of the District Plan and no land use consent is triggered. Therefore, I find in this case, including the mitigation measures proposed, that based on the evidence presented that this provision has been met.

Clause 3.10

[109] The introductory component of Clause 3.10 (1) states that;

(1) Territorial authorities may only allow highly productive land to be subdivided, used, or developed for activities not otherwise enabled under clauses 3.7, 3.8, or 3.9 if satisfied that:

[110] In response to my questions, Ms Hooper's view was that this only provision applies when Clause 3.8 has not been satisfied. I have already found that Clause 3.8 has been met, so I conclude that this provision does not apply.

³² Section 42 A Report, Ms L Buttimore, dated 17 March 2023, Paras 100 - 102

³³ Rebuttal Evidence, Ms K Hooper, dated 21 April 2023, Paras 34 and 80

³⁴ Rebuttal Evidence, Ms K Hooper, dated 21 April 2023, Para 71

NPS-HPL Conclusion

[111] In conclusion, I find that the revised proposal falls within the ambit of the exception provided for subdivision in terms of policy 7 of the NPS-HPL and is in general consistent with the other relevant provisions of the NPS.

Taranaki Regional Policy Statement (“the RPS”)

[112] Ms Buttimore³⁵ opined that the subdivision would not impact high level regional issues identified in the RPS such as water, soil and land, air, freshwater, indigenous biodiversity, natural and historic features, waste management, minerals, energy and the built environment.

[113] Ms Buttimore identified Section 10 of the RPS and in particular AMY Objective 1 and AMY Policy 1, which seek to maintain and enhance amenity values both in a rural and urban setting; concluding that in her effects assessment the proposal will not result in the loss of amenity values.³⁶

[114] While Ms Gerente addressed the RPS in her evidence, that was in relation to the original proposal³⁷, which I find only partially relevant to the revised proposal. There was no evidence from Ms Hooper as to the RPS.

[115] I have already reached a finding as to effects above, so do not repeat it here. I rely on that finding and Ms Buttimore’s evidence to conclude that the revised proposal is consistent with the provisions of the RPS, noting that the RPS as not been amended to give effect to the NPS-HPL.

Operative New Plymouth District Plan (ODP)

[116] The ODP became operative in 2005. Ms Buttimore identified in the Section 42A officer’s report her view of the provisions of the ODP relevant to this application.³⁸

[117] For the record I find the following provisions relevant as identified by Ms Buttimore for the revised application:

- Objective 1, Policy 1.1
- Objective 4, Policy 4.1, 4.2, 4.3, 4.4, 4.5, 4.8
- Objective 20, Policy 20.7

[118] Ms Buttimore considered the revised application along with the package of mitigation measures offered that the revised proposal maintained the elements of rural of character and overall was consistent with the objectives and policies of the District Plan.³⁹

[119] Again, while Ms Gerente addressed the ODP in her evidence, that was in relation to the original proposal⁴⁰, which again I find only partially relevant to the revised proposal. The ODP was not addressed in Ms Hooper’s evidence.

³⁵ Section 42A Report, Ms L Buttimore, dated 17 March 2023, Para 113

³⁶ Section 42A Report, Ms L Buttimore, dated 17 March 2023, Para 114

³⁷ Evidence in Chief, Ms Z Gerente, dated 25 May 2022, Paras 96 - 101

³⁸ Section 42A Report, Ms L Buttimore, dated 17 March 2023, Para 116

³⁹ Section 42A Report, Ms L Buttimore, dated 17 March 2023, Paras 117 - 120

⁴⁰ Evidence in Chief, Ms Z Gerente, dated 25 May 2022, Paras 84 - 89

[120] Considering the revised proposal, I accept the evidence, including reasons of Ms Buttimore that the proposal is consistent with the policy direction of the ODP.

Proposed New Plymouth District Plan (PDP)

[121] The PDP was publicly notified on 23 September 2019. The decision version of PDP was notified on 13 May 2023. In response to my request in Minute #11, both Ms Buttimore and Ms Hooper, helpfully addressed the changes to the PDP potentially impacting the revised proposal at the hearing. In summary, decision version of the PDP made no material difference to the assessment of the revised proposal.

[122] Ms Buttimore identified the following as relevant to the proposal:

Strategic Objective UFD - 24

Objectives: SASM-O1 to O2, HH-01, WB-O1 to O4, SUB-O1 to O2, RPROZ – O1 to RPROZ – O7

Policies: WB-P2, SASM-P2 to P5, HH-P13 to P15, SUB-P10, SUB-P12 to P14, RPROZ – P2 – P5 and P7.⁴¹

[123] Ms Buttimore considered the revised proposal consistent with the Historic heritage and SASM objectives and policies. However, Ms Buttimore, noting the clear direction of UFD-24 and RPROZ objectives RPROZ-O1, O2, O3, O5 and O6 as to protecting the finite resource and the productive capacity of rural farm land within the zone, that the revised proposal did not align with those objectives. In assessing the policies, Ms Buttimore, in summary considered, in particular as in relation to RPROZ-P2 and P3, the proposal would “*reduce the potential for versatile land to be used for productive purposes in a sustainable manner*” and that activities are to be avoided in circumstances where the adverse effect cannot be avoided, or appropriately mitigated on highly productive soils and versatile rural land.⁴²

[124] While opining that the revised proposal would be consistent with RPROZ-O4 which is about maintenance of rural character and amenity and the relevant policies, Ms Buttimore’s overall conclusion was as the revised proposal was inconsistent with the relevant objectives in the PDP as to protection of versatile soils and production orientated activities.⁴³

[125] Finally, Ms Buttimore considered that some of the objectives and policies of the PDP align with the NPS-HPL in regard to the loss of HPL, even though the provisions were drafted before the NPS-HPL came in effect.

[126] I was unable to identify any evidence from the Applicant addressing the above provisions directly as they may relate to the revised proposal.

[127] I accept that the revised proposal is consistent with the Historic Heritage, SASM and rural character and amenity provisions of the PDP. As to policy direction of the protecting the finite resource and the productive capacity of rural farmland I have already found in terms of the NPS-HPL section above that there is not a loss of long term productive capacity. In this case, I am not persuaded by Ms Buttimore’s evidence and conclude that the revised proposal, along with the mitigation measures, is consistent with protecting the finite resource and the productive capacity of rural farmland provisions.

⁴¹ Section 42A Report, Ms L Buttimore, dated 17 March 2023, Table 2

⁴² Section 42A Report, Ms L Buttimore, dated 17 March 2023, Paras 123 - 124

⁴³ Section 42A Report, Ms L Buttimore, dated 17 March 2023, Paras 125 - 126

Section 104(c) Any other matter

[128] Ms Buttimore considered the Iwi Environmental Management Plan Taiao, Tairora - the Iwi Environmental Management Plan for the Taranaki rohe, as a relevant and noted the support of Nga Mahanga A Tairi Hapu for the revised proposal. I accept Ms Buttimore's view that the revised proposal, "*will be largely consistent with the provisions of the aforementioned iwi management plan.*"⁴⁴

Section 106

[129] Ms Buttimore and Ms Gerente were in agreement that there was no reason to decline the application under Section 106 of the RMA.⁴⁵ The revised proposal not materially changing those assessments as to the original proposal and hearing no expert evidence to the contrary, I adopt that evidence.

Conditions Section 108 and Section 108AA

[130] Various suites of conditions were included in both the various section 42A Reports and planning evidence filed during the hearing. The planner's undertook conferencing as to a suite of conditions post the adjournment of the hearing of 19 May 2023.

[131] The outcome of the conferencing between the planners addressed both the revised proposal and a number of matters I raised in questioning which were included in the revised suite of conditions.

[132] In the reply statement, Mr Grieve confirmed the Applicant's offer of a condition for no further submission of Lots 1, 4, 5 or 6 while the land remains in the Rural Production Zone or similar rural zoning.⁴⁶

[133] Having reviewed the conditions and associated plans presented, I find the conditions to be generally appropriate having considered the effects and my findings above.

PART 2 – RMA

[134] This application is to be considered under Section 104 of the RMA, which sets out the matters that consent authorities shall have regard to when considering resource consent applications.

[135] In the decision (RJ Davidson Family Trust v Marlborough District Council [2018] NZCA 316, the Court of Appeal reconfirmed the pre-eminence of Part 2 matters in the consideration of resource consents. The Court however found that in those instances where it is clear that a planning document has been competently prepared having regard to Part 2 and contains a coherent set of policies leading toward clear environmental outcomes, consideration of Part 2 is unlikely to assist evaluation of a proposal. Conversely, where a plan has not been prepared in a manner which appropriately reflects Part 2, or the objectives and policies are pulling in different directions, consideration of Part 2 is both appropriate and necessary.

[136] Mr Grieve in his submissions and reply statement addressed the reasons and case law of the RJ Davidson decision and the need in his submission for consideration of

⁴⁴ Section 42A Report, Ms L Buttimore, dated 17 March 2023, Para 127

⁴⁵ Section 42A Report, Ms L Buttimore, dated 16 May 2022, Para 112 and Evidence in Chief, Ms Z Gerente, dated 25 May 2022, Para 102

⁴⁶ Reply Statement, Mr S Grieve, dated 2 June 2023, Para 27

Part 2. Mr Grieve further noted in the reply statement the need to consider the enabling aspects of section 5, including the provision of housing. That latter point I do not accept.

- [137] As to Part 2 matters, Ms Buttimore focusing on the ODP and PDP, was of the view that there was potential incomplete coverage of in relation to the protection of HPL and considered that assessment against Part 2 was appropriate. Ms Buttimore's view was that the proposal was consistent with some of the principles in Part 2, notably Section 7 c) and Section 7 f) as they relate to the maintenance and enhancement of rural character.⁴⁷ However, in relation to Section 7 b) and g) as to efficient use and finite characteristics, the revised proposal was inconsistent.⁴⁸ As to section 5, Ms Buttimore considered that proposal did not meet section 5(2) (a) and (b) as for the reasons set out in her section 42A Report, *"specifically, the loss of the productive capacity of highly productive soils. Further, the proposal is not consistent with the NPS-HPL as set out above which appropriately gives effect to Part 2 of the RMA."*⁴⁹
- [138] Ms Hooper's evidence as to Part 2, was that, *"Clause 3.8 of NPS-HPL must be applied in a way that is consistent with Part 2 RMA and an overzealous application leaning towards 'absolute protection' would not be consistent, as it would not achieve the balance necessary to promote sustainable management as defined in Section 5."*⁵⁰ The *absolute* protection reference being from the NPS-HL section 32 analysis.
- [139] In this case I find the reference to Part 2 of the RMA is appropriate, noting that ODP and PDP, and indeed the RPS has not yet been amended to give effect to the NPS-HPL. Nonetheless I have found the revised proposal to be within the exception for subdivision under the NPS-HPL, and hence to align the lower order planning provisions. Having carefully considered all the matters in Part 2, particularly Section 8, section 7 b), c), f), g) and Section 5, the revised proposal as whole promotes sustainable management.

Conclusion and Decision

- [140] Acting under delegated authority pursuant to Section 34A, and Sections 104 and 104B of the Resource Management Act 1991, the application made by B, M and R Sim for Resource Consent (SUB21/47781) for a three (3) lot subdivision and, boundary adjustment and balance lot at 6 and 42 Leith Road, Okato, New Plymouth, is **granted**.
- [141] This decision is made for the reasons discussed throughout and, in summary, because:
- The activity that is **granted** is consistent with the purpose and principles of the Resource Management Act 1991;
 - The activity that is **granted** is consistent with the provisions of the operative and proposed New Plymouth District Plan; and
 - The activity that is **granted** is unlikely to have adverse effects on the environment.

⁴⁷ Section 42A Report, Ms L Buttimore, dated 17 March 2023, Para 137

⁴⁸ Section 42A Report, Ms L Buttimore, dated 17 March 2023, Para 133 - 136

⁴⁹ Section 42A Report, Ms L Buttimore, dated 17 March 2023, Para 143

⁵⁰ Rebuttal Evidence, Ms K Hooper, dated 21 April 2023, Para 74

DATED this 21st day of June 2023



Mark St.Clair (Independent Commissioner)

Appendix 1 – Minutes

Appendix 2 - Conditions

**Directions/Minute of the Commissioner #1
SUB21/47781**

**Application for resource consent for B, M and R Sim for a 6 lot subdivision at 6 and 42
Leith Road, Okato, New Plymouth.**

Pursuant to section 34A of the Resource Management Act 1991 (RMA), independent commissioner Mark St.Clair has been appointed by New Plymouth District Council (NPDC) to hear and determine the application lodged by B, M and R Sim (the Applicant) to undertake a 6 lot subdivision at 6 and 42 Leith Road, Okato, New Plymouth.

The hearing is scheduled to commence at **10.00am Wednesday 8 June 2021** at the New Plymouth District Council Civic Centre (NPDC), 84 Liardet Street, New Plymouth. At this stage the hearing is scheduled for one day. NPDC will separately issue a formal hearing notice to the parties.

The Commissioner notes that section 103B, requires that a consent authority must provide the section 42A reports to the applicant and submitters who wish to be heard, at least 15 working days prior to the hearing. In addition, section 103B requires the applicant to provide the consent authority with briefs of evidence 10 working days before the hearing, and for submitters calling expert evidence to similarly provide that evidence 5 working days before the hearing. The Commissioner further notes that the consent authority must give written or electronic notice to the parties, that the applicant's evidence and any submitter expert evidence is available at the consent authority's offices. In relation to his last matter, I request that NPDC email the parties with a link to the Council's website of any material filed.

Accordingly:

1. Pursuant to section 103B(2) of the RMA, the Commissioner directs that the NPDC section 42A report be provided to the parties, by way of email with a link to the Council's website, no later than **3pm on Monday 16 May 2022**.
2. Pursuant to section 103B(3) of the RMA, the Commissioner directs that the Applicant is to provide written briefs of all their evidence to Jane Hickmott (jane.hickmott@npdc.govt.nz), Hearings' Administrator at NPDC, by way of email, no later than **3pm on Monday 23 May 2022**.
3. The Commissioner requests that as soon as practicable following receipt of any such evidence received pursuant to Direction 2, NPDC provides a copy to all other parties to these proceedings by way of email with a link to the Council's website.
4. Pursuant to section 103B(4) of the RMA, the Commissioner directs that if any person who has made a submission intends to present expert evidence at the hearing, including expert planning evidence, then that party is to provide a written brief of that expert evidence to Jane Hickmott, Hearings' Administrator at NPDC, by way of email, no later than **3pm on Monday 30 May 2021**.
5. The Commissioner requests that as soon as practicable following receipt of any such evidence received pursuant to Direction 4, NPDC provides a copy to all other parties to these proceedings by way of email with a link to the Council's website.
6. In terms of Directions 1, 2 and 4 the reports and evidence should be provided to NPDC electronically by email. Hard copies of the evidence should only be provided on request.

7. Pursuant to s41C(1) of the RMA, the Commissioner directs that in respect of expert evidence pre-circulated in accordance with these Directions, the hearing will be conducted in the following manner:
- The section 42A report(s) will be taken as read;
 - The applicant that has provided the pre-circulated evidence is to call the witness in person;
 - The witness should be introduced and asked to confirm his or her qualifications and experience;
 - The witness should be asked to confirm the matters of fact and opinion contained in the brief of evidence;
 - The witness will then be given an opportunity to draw to the attention of the Commissioner the key points in the brief. No new evidence shall be introduced, unless it is specifically in response to matters raised in other pre-circulated briefs of evidence supplied by another party – in such cases the new evidence shall be presented in written form as an Addendum to the primary brief of evidence and it may be verbally presented by the witness. If there is any variation between what the witness says and what is in the brief of evidence, the Commissioner will assume that the written brief is the evidence unless the content of the brief is specifically amended by the witness;
 - The witness may then be questioned by the Commissioner.
8. Non-expert evidence (including legal submissions) should be tabled and read aloud on the day that the relevant party appears at the hearing.
9. The hearing will be conducted in a manner which is appropriate and fair, but without unnecessary formality. Subject to adequate notice, the Commissioner will receive written or spoken evidence in Te Reo Māori. If any party wishes to present evidence in Te Reo Māori, they are requested to contact Jane Hickmott, Hearings' Administrator at NPDC, no later than **3pm on Friday 20 May 2022**.
10. The Commissioner also requests that all parties (the NPDC reporting officer, B, M and R Sim as the applicant, and any of the submitters) calling expert witnesses liaise amongst themselves in order to facilitate their respective experts conferencing on matters relevant to their specific areas of expertise prior to the preparation of their reports or evidence (including any applicable conditions of consent) and through to the commencement of the hearing. The aim of the conferencing should be to identify areas of agreement and disagreement which can then be noted in the reports and evidence (Environment Court Practice Note 2014, Appendix 3). The Commissioner will attempt to focus on the issues of contention during the hearing and in deliberations thereafter and so the assistance of the parties to clearly identify areas of expert agreement and disagreement in this manner will be greatly appreciated.
11. Any correspondence to the Commissioner should be directed through Jane Hickmott Hearings' Administrator at NPDC (jane.hickmott@npdc.govt.nz).



Mark St.Clair
Independent Commissioner - Chair
Date 13 May 2022

**Directions/Minute of the Commissioner #2
SUB21/47781**

**Application for resource consent for B, M and R Sim for a 6 lot subdivision at 6 and 42
Leith Road, Okato, New Plymouth.**

- a) I issued Minute #1, dated 13 May 2022, setting out the timetabling pursuant to section 103B of the Resource Management Act 1991 (RMA), and other matters as to the conduct of the hearing.
- b) Today, 20 May 2022, I received a memoranda from Counsel for the Applicant, Mr Grieve, seeking an extension to the date for filing of all the applicant's evidence until 3pm Wednesday 25 May 2022 (see attached). The memorandum setting out the reasons for the requested extension. I further received an email from Mr Grieve, via the hearings' administrator, advising a correction to paragraph 4 of the attached memoranda, noting that a hearing on 8 June or 10 June 2022, would not be outside the 75 working day time limit.
- c) I am advised by the hearings' administrator that the Council and section 42A reporting officers are not opposed to the request.
- d) While the submitter on the application has not requested to heard, I have considered their situation in light of the fact they may change their position. Taking that into account, and as matter of fairness, a similar extension of time for filing would be appropriate.
- e) Having considered all of the above, the request for the extension is granted.
- f) Accordingly, the timetable set out in Minute #1, is amended as follows:
2. Pursuant to section 103B(3) of the RMA, the Commissioner directs that the Applicant is to provide written briefs of all their evidence to Jane Hickmott (jane.hickmott@npdc.govt.nz), Hearings' Administrator at NPDC, by way of email, no later than **3pm on Wednesday 25 May 2022**.
 3. The Commissioner requests that as soon as practicable following receipt of any such evidence received pursuant to Direction 2, NPDC provides a copy to all other parties to these proceedings by way of email with a link to the Council's website.
 4. Pursuant to section 103B(4) of the RMA, the Commissioner directs that if any person who has made a submission intends to present expert evidence at the hearing, including expert planning evidence, then that party is to provide a written brief of that expert evidence to Jane Hickmott, Hearings' Administrator at NPDC, by way of email, no later than **3pm on Wednesday 1 June 2022**.
 5. The Commissioner requests that as soon as practicable following receipt of any such evidence received pursuant to Direction 4, NPDC provides a copy to all other parties to these proceedings by way of email with a link to the Council's website.
- g) The remainder of the timetabling, matters as to the conduct of the hearing and the date and time of hearing of **10.00am Wednesday 8 June 2022** (corrected from 2021 in Minute #1) are unchanged.
- h) Any correspondence to the Commissioner should be directed through Jane Hickmott Hearings' Administrator at NPDC (jane.hickmott@npdc.govt.nz).



Mark St.Clair
Independent Commissioner - Chair
Date 20 May 2022

**Directions/Minute of the Commissioner #3
SUB21/47781**

**Application for resource consent for B, M and R Sim for a 6 lot subdivision at 6 and 42
Leith Road, Okato, New Plymouth.**

- a) Last evening, 30 May 2022, via the hearings' administrator, I received an email from Counsel for the Applicant, Mr Grieve, which included attached supplementary planning evidence. The email from Mr Grieve, indicates that expert witness conferencing has taken place and that the supplementary evidence is in response to matters raised in conferencing.
- b) I have not read or opened the supplementary evidence attached to the email. At this stage I am not prepared to accept the supplementary evidence without leave to file such evidence being sought, as well as a fuller explanation as to what expert conferencing, if any, has occurred, and what experts were involved.
- c) I find it highly unusual to be advised that expert conferencing has occurred, yet there is no resulting joint witness statement/s from the experts involved before me.
- d) If Mr Grieve could provide an explanation addressing the above matters, including reasons for the request to file supplementary evidence to Jane Hickmott (jane.hickmott@npdc.govt.nz), Hearings' Administrator at NPDC, by way of email, no later than **3pm on Wednesday 1 June 2022**.
- e) If the other parties, including the Council reporting officers have any information or wish to respond to this matter, they should provide that material to Jane Hickmott (jane.hickmott@npdc.govt.nz), Hearings' Administrator at NPDC, by way of email, no later than **3pm on Thursday 2 June 2022**.



Mark St.Clair
Independent Commissioner - Chair
Date 31 May 2022

**Directions/Minute of the Commissioner #4
SUB21/47781**

**Application for resource consent for B, M and R Sim for a 6 lot subdivision at 6 and 42
Leith Road, Okato, New Plymouth.**

- a) Further to Minute #3, dated 31 May 2022, Mr Grieve, Counsel for the Applicant, filed a memorandum dated 31 May 2022, seeking leave to file supplementary planning evidence (dated 30 May 2022) and provided some explanation as to the referenced conferencing, which Mr Grieve understood to have occurred.
- b) On 1 June 2022, I received from the hearings' administrator signed joint witness statements (JWS) of the same date. One from the Ms Gerente and Ms Buttimore (Planning JWS) and one from Mr Bain, Ms Griffith and Ms Dravitzki (Landscape JWS); both dated 1 June 2022.
- c) Ms Buttimore (Section 42A Reporting Officer) advised the hearings' administrator that she was not opposed to the filing of supplementary planning evidence but sought the opportunity to file evidence in response.
- d) In summary, taking account all of the above and relation to fairness and no undue prejudice to any party, the request to file supplementary planning evidence from the Applicant is granted. Similarly, the request to file supplementary planning evidence in response from the Section 42A officer is granted.
- e) Accounting for the sovereign's birthday observance on Monday 6 June 2022 which is not a working day under the Resource Management Act 1991, Ms Buttimore is to provide supplementary planning evidence in response to the supplementary planning evidence of Ms Gerente, to Jane Hickmott (jane.hickmott@npdc.govt.nz), Hearings' Administrator at NPDC, by way of email, no later than **5pm on Tuesday 7 June 2022**. On receipt of said supplementary evidence Ms Hickmott is to email that evidence to the parties.



Mark St.Clair
Independent Commissioner - Chair
Date 3 June 2022

**Directions/Minute of the Commissioner #5
SUB21/47781**

**Application for resource consent for B, M and R Sim for a 6 lot subdivision at 6 and 42
Leith Road, Okato, New Plymouth.**

- a) The hearing commenced at 10am on Wednesday 8 June 2022. In addressing any preliminary procedural matters, I informed the parties as to what I observed as a potential scope issue related to the subdivision application before me. Namely, that as a result of the expert planning conferencing, the Planning Joint Witness Statement (JWS) and the supplementary evidence from Ms Gerente (for the Applicant) and Ms Buttimore (for the Council), that a land use consent was also required for the proposal. I observed to the parties that a land use consent application had not been filed, only a subdivision consent application. Furthermore, I noted that an assessment of the potential effects of the land use had not been undertaken and nor had a notification assessment under section 95 of the Resource Management Act 1991 (RMA). Finally, I observed that the delegation to me for the hearing under section 34A of the RMA, only related to a subdivision consent.
- b) I suggested to the parties that a potential way forward was for me to issue a section 91(1) of the RMA decision placing the application on hold, while an application for land use was filed and assessed as required; until such time as the land use consent application caught up procedurally with the subdivision consent application. At this point I adjourned the hearing to provide the parties with the opportunity to consider this approach, suggest any alternatives or raise any issues in opposition. At the resumption of the hearing, the parties advised that they had discussed the matter and agreed with the approach outlined above.
- c) For completeness, I record that, in line with section 18A(a) of the RMA and with the agreement of the parties, I recommenced the hearing as to the subdivision consent matters and the hearing was adjourned at 4.11pm Wednesday 8 June 2022.
- d) Therefore, pursuant to section 91(1) of the RMA, the subdivision consent application SUB21/47781 from B, M and R Sim for a subdivision at 6 and 42 Leith Road, Okato, New Plymouth is placed on hold as an application for land use consent is also required and that it is appropriate to do so in order to better understand the proposal.
- e) Again for completeness, I would be assisted if the exact nature of any land use consent application was established between the parties, noting the matters raised in the Planning JWS and the additional matters raised in the hearing by Ms Buttimore, as to identified vehicle crossings, driveway locations, building platforms for Lots 2 and 3 and any assessment as to earthworks and landscape treatment, depending on the specifics of what the Applicant proposes.
- f) Any correspondence to the Commissioner should be directed through Jane Hickmott Hearings' Administrator at NPDC (jane.hickmott@npdc.govt.nz).



Mark St.Clair
Independent Commissioner - Chair
Date 10 June 2022

**Directions/Minute of the Commissioner #6
SUB21/47781**

**Application for resource consent for B, M and R Sim for a 6 lot subdivision at 6 and 42
Leith Road, Okato, New Plymouth.**

- a) As detailed in Minute #5 dated 10 June 2022, I placed the application on hold pending the filing and processing of the identified requirement for a land use consent application. On that same date I received a memorandum from Mr Grieve, providing responses to information I requested at the hearing. In addition, today 15 June 2022, again as I requested at the hearing, I received a revised suite of conditions from the planners, Ms Buttimore and Ms Gerente. I have asked Ms Hickmott to make all that information available to the parties.
- b) In the memorandum from Mr Grieve dated 10 June 2022, Mr Grieve provided information from Mr Lumb (surveyor for the Applicants) as how proposed Conditions 12(h) could be complied with and if required, sought leave for Mr Lumb to file evidence explaining the plans and information included in the memorandum.
- c) While I might find that helpful, I am mindful of the forth coming land use consent application, which depending on exactly what is in that application as set out in Paragraph e) of Minute #5; that the plans and information regarding proposed condition 12(h) may be addressed noting that the proposal requires both subdivision and land use consent.
- d) Therefore, at this point I do not require supplementary evidence from Mr Lumb, explaining the plans and information included in the memorandum of Mr Grieve dated 10 June 2022. I will revisit this matter following the land use consent application "catching up to" the subdivision application.
- e) One final request. I would be appreciative of the Council Officers and the Applicant periodically advising Ms Hickmott and hence myself as to progress of the land use application. This will assist in the next steps as to hearing process.
- f) Any correspondence to the Commissioner should be directed through Jane Hickmott Hearings' Administrator at NPDC (jane.hickmott@npdc.govt.nz).



Mark St.Clair
Independent Commissioner - Chair
Date 15 June 2022

**Directions/Minute of the Commissioner #7
SUB21/47781**

Application for resource consent for B, M and R Sim for a 6 lot subdivision and land use at 6 and 42 Leith Road, Okato, New Plymouth.

1. Pursuant to section 91(1) of the Resource Management Act 1991 (RMA), the subdivision consent application SUB21/47781 from B, M and R Sim for a subdivision at 6 and 42 Leith Road, Okato, New Plymouth was placed on hold, on 10 June 2022 so that an application for land use consent could be filed with Council.
2. The land use application was lodged on 23 August 2022 and I have now received from Council a section 95 of the RMA decision report for said land use application. The section 95 of the RMA decision is that the land use application should proceed on a non-notified basis, with the decision being made by officers under delegated authority. In addition, I have now been delegated the authority pursuant to section 34A of the RMA, to hear and determine the land use application, alongside the application lodged by B, M and R Sim (the Applicant) to undertake a 6 lot subdivision at 6 and 42 Leith Road, Okato, New Plymouth. As such, the application is now removed from being on hold pursuant to section 91(1) of the RMA.
3. Now that land use application is at stage to be considered, the process now requires that Council prepare a section 42A report and similarly the applicant and submitter have the opportunity to file evidence on the revised application.
4. I observe that since the subdivision application was placed on hold, the National Policy Statement for Highly Productive Land 2022 has come into force on 17 October 2022. I would be assisted if the parties could address this matter in their responses as timetabled below. In addition, I would also be assisted by any material as to the integrated nature of the two applications, including any recommendations as to a revised set of conditions.

Accordingly:

5. Pursuant to section 103B(2) of the RMA, the Commissioner directs that the NPDC section 42A report be provided to the parties, by way of email with a link to the Council's website, no later than **3pm on Tuesday 6 December 2022**.
6. Pursuant to section 103B(3) of the RMA, the Commissioner directs that the Applicant is to provide written briefs of all their evidence to Jane Hickmott (jane.hickmott@npdc.govt.nz), Hearings' Administrator at NPDC, by way of email, no later than **3pm on Tuesday 20 December 2022**.
7. The Commissioner requests that as soon as practicable following receipt of any such evidence received pursuant to Direction 6, NPDC provides a copy to all other parties to these proceedings by way of email with a link to the Council's website.
8. Pursuant to section 103B(4) of the RMA, the Commissioner directs that if any person who has made a submission intends to present expert evidence at the hearing, including expert planning evidence, then that party is to provide a written brief of that expert evidence to Jane Hickmott (jane.hickmott@npdc.govt.nz), Hearings' Administrator at NPDC, by way of email, no later than **3pm on Tuesday 24 January 2023**.

9. The Commissioner requests that as soon as practicable following receipt of any such evidence received pursuant to Direction 8, NPDC provides a copy to all other parties to these proceedings by way of email with a link to the Council's website.
10. In terms of Directions 5, 6 and 8 the reports and evidence should be provided to NPDC electronically by email. Hard copies of the evidence should only be provided on request.
11. On receipt and review of the above section 42A report and any evidence, I will then set out the next steps in the hearing process.
12. Any correspondence to the Commissioner should be directed through Jane Hickmott Hearings' Administrator at NPDC (jane.hickmott@npdc.govt.nz).



Mark St.Clair
Independent Commissioner - Chair
Date 23 November 2022

**Directions/Minute of the Commissioner #8
SUB21/47781 and LUC22/48312**

Application for resource consent for B, M and R Sim for a 6 lot subdivision and land use at 6 and 42 Leith Road, Okato, New Plymouth.

1. I issued Minute #7 (incorrectly numbered #6), dated 23 November 2022, setting out the timetabling pursuant to section 103B of the Resource Management Act 1991 (RMA), and other matters as to the recommencement of the hearing for the now combined subdivision and land use consent applications.
2. The Section 42A RMA Report timetabled for distribution on Tuesday 6 December 2022, has been pre-circulated to the parties.
3. Today, 13 December 2022, I received a memoranda from Counsel for the Applicant, Mr Grieve, seeking an extension to the date for filing of all the applicant's evidence until 3pm Tuesday 24 January 2023 (see attached). The memorandum sets out the reasons for the requested extension.
4. I am advised by the hearings' administrator that the Council and section 42A reporting officers are not opposed to the request.
5. While the submitter on the application has not requested to be heard, I have considered their situation in light of the fact they may change their position. Taking that into account, and as a matter of fairness, an extension of time for filing would be appropriate.
6. Having considered all of the above, I find that no party would be unduly prejudiced and hence the request for the extension is granted.
7. Pursuant to section 103B(3) of the RMA, the Commissioner directs that the Applicant is to provide written briefs of all their evidence to Jane Hickmott (jane.hickmott@npdc.govt.nz), Hearings' Administrator at NPDC, by way of email, no later than **3pm on Tuesday 24 January 2023**.
8. The Commissioner requests that as soon as practicable following receipt of any such evidence received pursuant to Direction 7, NPDC provides a copy to all other parties to these proceedings by way of email with a link to the Council's website.
9. Pursuant to section 103B(4) of the RMA, the Commissioner directs that if any person who has made a submission intends to present expert evidence at the hearing, including expert planning evidence, then that party is to provide a written brief of that expert evidence to Jane Hickmott (jane.hickmott@npdc.govt.nz), Hearings' Administrator at NPDC, by way of email, no later than **3pm on Tuesday 7 February 2023**.
10. The Commissioner requests that as soon as practicable following receipt of any such evidence received pursuant to Direction 9, NPDC provides a copy to all other parties to these proceedings by way of email with a link to the Council's website.
11. In terms of Directions 7 and 9 the reports and evidence should be provided to NPDC electronically by email. Hard copies of the evidence should only be provided on request.
12. On receipt and review of the above-mentioned evidence, I will then set out the next steps in the hearing process.

13. Any correspondence to the Commissioner should be directed through Jane Hickmott Hearings' Administrator at NPDC (jane.hickmott@npdc.govt.nz).

A handwritten signature in black ink, appearing to read 'Mark St. Clair', with a stylized flourish at the end.

Mark St.Clair
Independent Commissioner - Chair
Date 13 December 2022

**Directions/Minute of the Commissioner #9
SUB21/47781 and LUC22/48312
Application for resource consent for B, M and R Sim for a 6 lot subdivision and land
use at 6 and 42 Leith Road, Okato, New Plymouth.**

1. Pursuant to Minute #8, dated 13 December 2022, the Applicant filed four (4) briefs of evidence in accordance with the revised timetable. I record that there was no evidence filed by the submitter within the specified timetable.
2. I observe that one of those briefs of evidence, the planning evidence dated 24 January 2023 from Ms K Hooper, includes a revised subdivision scheme which appears to reduce the proposal to a boundary adjustment and a three (3) lot subdivision. For completeness I note this new proposal dated 24 January 2023 is different the original proposal dated 7 May 2021 and the first revised proposal dated 21 August 2022.
3. On 8 February 2023, I received an email from Council's reporting officer, Ms Buttimore, noting the change in the proposal and seeking leave to prepare an amended section 42A report to reflect the revised proposal. I see merit in this request for all parties in potentially expediting proceedings.
4. In addition, on the same date 8 February 2023, I received a memorandum from the Applicant's Counsel, Mr Grieve, seeking that the reconvened hearing be delayed so that Mr Grieve could attend the in person or via Video link, post recovery from a surgical procedure. More specifically Mr Grieve's availability would be, subject to rehabilitation progression, via Video Link from 6 March 2023 to 3 April 2023, and from that time on in person.
5. I held a phone conference on 9 Feb 2023, with Mr Grieve and Ms Buttimore to work through the procedural matters leading up to the reconvened hearing and to establish a date suitable for all parties.
6. Having considered all of the above, and noting the agreement of the parties, I find that no party would be unduly prejudiced and hence the procedures and reconvened hearing are set put below.
7. The hearing is to be reconvened at **9am on Friday 19 May 2023**, at the offices of the New Plymouth District Council, 84 Liardet Street, New Plymouth. At this stage the hearing is scheduled for one day. NPDC will separately issue a formal hearing notice to the parties. Consideration to the hearing being conducted by Video Link will be made following the receipt of the section 42A report and any rebuttal evidence.
8. Pursuant to section 103B(2) of the RMA, the Commissioner directs that the NPDC section 42A report be provided to the parties addressing the revised proposal, by way of email with a link to the Council's website, no later than **3pm on Friday 17 March 2023**.
9. Pursuant to section 103B(3) of the RMA, the Commissioner directs that the Applicant is to provide written briefs of any rebuttal evidence to Jane Hickmott (jane.hickmott@npdc.govt.nz), Hearings' Administrator at NPDC, by way of email, no later than **3pm on Friday 21 April 2023**.
10. The Commissioner requests that as soon as practicable following receipt of any such evidence received pursuant to Direction 9, NPDC provides a copy to all other parties to these proceedings by way of email with a link to the Council's website.

11. Pursuant to section 103B(4) of the RMA, the Commissioner directs that if any person who has made a submission intends to present expert evidence at the hearing, including expert planning evidence, then that party is to provide a written brief of that expert evidence to Jane Hickmott (jane.hickmott@npdc.govt.nz), Hearings' Administrator at NPDC, by way of email, no later than **3pm on Friday 3 May 2023**.
12. The Commissioner requests that as soon as practicable following receipt of any such evidence received pursuant to Direction 11, NPDC provides a copy to all other parties to these proceedings by way of email with a link to the Council's website.
13. In terms of Directions 9 and 11 the reports and evidence should be provided to NPDC electronically by email. Hard copies of the evidence should only be provided on request.
14. Pursuant to s41C(1) of the RMA, the Commissioner directs that in respect of expert evidence pre-circulated in accordance with these Directions, the hearing will be conducted in the following manner:
 - a. The section 42A report(s) will be taken as read;
 - b. The applicant that has provided the pre-circulated evidence is to call the witness in person;
 - c. The witness should be introduced and asked to confirm his or her qualifications and experience;
 - d. The witness should be asked to confirm the matters of fact and opinion contained in the brief of evidence;
 - e. The witness will then be given an opportunity to draw to the attention of the Commissioner the key points in the brief. No new evidence shall be introduced, unless it is specifically in response to matters raised in other pre-circulated briefs of evidence supplied by another party – in such cases the new evidence shall be presented in written form as an Addendum to the primary brief of evidence and it may be verbally presented by the witness. If there is any variation between what the witness says and what is in the brief of evidence, the Commissioner will assume that the written brief is the evidence unless the content of the brief is specifically amended by the witness;
 - f. The witness may then be questioned by the Commissioner.
15. Any written Legal Submissions should be provided to Jane Hickmott (jane.hickmott@npdc.govt.nz), Hearings' Administrator at NPDC, by way of email, no later than **3pm on Wednesday 17 May 2023** and distributed to the parties. Non-expert evidence (if any) should be tabled and read aloud on the day that the relevant party appears at the hearing.
16. Any correspondence to the Commissioner should be directed through Jane Hickmott Hearings' Administrator at NPDC (jane.hickmott@npdc.govt.nz).



Mark St.Clair
Independent Commissioner -
Chair Date 9 February 2023

Directions/Minute of the Commissioner #10
SUB21/47781 and LUC22/48312
Application for resource consent for B, M and R Sim for a 6-lot subdivision and land
use at 6 and 42 Leith Road, Okato, New Plymouth.

1. The hearing for these applications is to be reconvened at **9am on Friday 19 May 2023**, at the offices of the New Plymouth District Council, 84 Liardet Street, New Plymouth.
2. I have received requests from Mr Grieve, on behalf of the Applicant, and Ms Buttimore, on behalf of the Council, as to the need for all of the witnesses to attend the hearing, given the amendments to the application and apparent now non-contentious nature of the evidence, in particular as to landscape and visual matters.
3. Having reviewed the amended application and the landscape evidence, I do not require, Mr Juffermans, Mr Bain and Ms Dravitiski for the Applicant to attend the hearing. Similarly, I do not require Ms Griffith for the Council to attend the hearing.
4. That said, if any matter should arise during the hearing as to require any questions for those witnesses, I will issue any such questions in writing with a timetable for a written response.
5. The attendance at the hearing of the remaining witnesses for the Applicant, Mr Allen and Ms Hooper is required.
6. For completeness I note that no evidence was received from the submitter within the timetable specified in Minute #9.
7. Finally, as set out in Minute #9, any written Legal Submissions should be provided to Jane Hickmott (jane.hickmott@npdc.govt.nz), Hearings' Administrator at NPDC, by way of email, no later than **3pm on Wednesday 17 May 2023** and distributed to the parties.
8. Any correspondence to the Commissioner should be directed through Jane Hickmott Hearings' Administrator at NPDC (jane.hickmott@npdc.govt.nz).



Mark St.Clair
Independent Commissioner - Chair
Date 15 May 2023

**Directions/Minute of the Commissioner #11
SUB21/47781 and LUC22/48312**

**Application for resource consent for B, M and R Sim for a 6 lot subdivision and land
use at 6 and 42 Leith Road, Okato, New Plymouth.**

1. As noted in Minute #10, the hearing for these applications is to be reconvened at **9am on Friday 19 May 2023**, at the offices of the New Plymouth District Council, 84 Liardet Street, New Plymouth.
2. In reviewing the pre-circulated section 42A report and evidence, in particular as to the topic of the Proposed District Plan, I observe that the decisions have been released as of 13 May 2023 and a "Proposed District Plan - Decisions Version" is available online.
3. Given that the hearing is to be reconvened on Friday 19 May 2023, I request that parties address the implications of the decision version of the Proposed Plan, if any, as to the application at the hearing itself. Pre-circulation of any written material is not required, but I would be assisted if any material presented at the hearing was in writing.
4. Any correspondence to the Commissioner should be directed through Jane Hickmott Hearings' Administrator at NPDC (jane.hickmott@npdc.govt.nz).



Mark St.Clair
Independent Commissioner - Chair
Date 15 May 2023

**Directions/Minute of the Commissioner #12
SUB21/47781 and LUC22/48312**

**Application for resource consent for B, M and R Sim for a 6 lot subdivision and land
use at 6 and 42 Leith Road, Okato, New Plymouth.**

1. The hearing was reconvened at **9am on Friday 19 May 2023**, at the offices of the New Plymouth District Council, 84 Liardet Street, New Plymouth. Having heard from the parties I adjourned the hearing at 4.10pm on the same day.
2. As I signalled verbally at the hearing, the next step in the hearing process is for the planners to prepare a joint witness statement to address the matters raised during the hearing as to conditions, including but not limited to the final agreed plans showing the layout of the proposed subdivision. The planners are required to file the revised conditions of consent with Jane Hickmott (jane.hickmott@npdc.govt.nz), Hearings' Administrator at NPDC, by way of email, by **3pm on Friday 26 May 2023**. The revised conditions should then be emailed to all parties.
3. The following step is for Applicant's right of reply. The Applicant is required to file their written right of reply with Jane Hickmott (jane.hickmott@npdc.govt.nz), Hearings' Administrator at NPDC, by way of email, by **3pm on Friday 2 June 2023**. The right of reply should then be emailed to all parties.
4. Following the receipt of the right of reply and on confirming I have all the information I require, I will close the hearing by way a minute. I will then proceed to deliberations and the preparation of the decision.
5. Any correspondence to the Commissioner should be directed through Jane Hickmott Hearings' Administrator at NPDC (jane.hickmott@npdc.govt.nz).



Mark St.Clair
Independent Commissioner - Chair
Date 22 May 2023

Directions/Minute of the Commissioner #13
SUB21/47781 and LUC22/48312
Application for resource consent for B, M and R Sim for a 6 lot subdivision and land
use at 6 and 42 Leith Road, Okato, New Plymouth.

1. Following the reconvened hearing of **Friday 19 May 2023**, I sought through Minute #12, a revised suite of conditions of consent from the planners by **Friday 26 May 2023** and the Applicant's written right of reply by **Friday 2 June 2023**. Those documents were accordingly filed and sent to all parties.
2. Having reviewed those documents, I now consider that I have all the information I require. The hearing is now closed as of today's date. As such, I will now proceed to deliberations and the preparation of the decision. I anticipate that decision report will be available within 15 working days being on or before 28 June 2023.
3. Any correspondence to the Commissioner should be directed through Jane Hickmott Hearings' Administrator at NPDC (jane.hickmott@npdc.govt.nz).



Mark St.Clair
Independent Commissioner - Chair
Date 7 June 2023

**CLEAN COPY OF CONSENT CONDITIONS AGREED BETWEEN K HOOPER
AND L BUTTIMORE – Hearing for B, M and R Sim
25 May 2023**

SUB21/47781

Subject to the following conditions imposed under Section 108 of the Resource Management Act 1991:

1. The subdivision activity shall be carried out in accordance with the plans and all information submitted with the application, and all referenced by the Council as consent number SUB21/47781.
2. The application for a certificate under section 224(c) of the RMA shall be accompanied by certification from a professionally qualified surveyor or engineer that all the conditions of subdivision consent have been complied with and that in respect of those conditions that have not been complied with:
 - a. a completion certificate has been issued in relation to any conditions to which section 222 applies;
 - b. a consent notice has been or will be issued that in relation to any conditions to which section 221 applies;
 - c. a bond has been entered into by the subdividing owner in compliance with any condition of subdivision consent imposed under section 108(2)(b).

Survey Plan Approval

3. The survey plan shall conform with the subdivision scheme plans submitted by Juffermans Surveyors Ltd and entitled "Lots 1, 4, 5 & 6 being a subdivision of Part Lot 1 DP 8787 and Lot 1 DP 19869"; Job Number 20198; 20 April 2023.
4. The building platform on Lot 5 shall be consistent with the plan submitted by Juffermans Surveyors Ltd entitled "Proposed House Location Lot 5, 6 Leith Road Okato, dated 23 January 2023" and identified and marked on the survey plan.
5. The building platform on Lot 1 shall be consistent with the plan submitted by Juffermans Surveyors entitled "Lots 1, 4, 5 & 6 being a subdivision of Part Lot 1 DP 8787 and Lot 1 DP 19869"; Job Number 20198; 20 April 2023 and shall be marked and defined on the survey plan.
6. That the consent be subject to the following amalgamation condition:
'That Lot 6 hereon is held with Lot 2 DP 18489 and that one Record of Title is issued herewith'.

Building platforms and onsite stormwater disposal systems

7. An inspection and a report shall be carried out of soil compatibility by a suitably qualified person and submitted to the council to confirm the suitability of Lot 1 for on-site stormwater disposal.
8. A report shall be provided from a suitably qualified person to confirm that there is available within Lot 1 a stable flood free building platform suitable for building foundations in accordance with the requirements of the New Zealand Building Code – Acceptable Solution B1/AS4 of Approved Document B1/4; Structure Foundations.
9. Any recommendations requiring specific on-site stormwater and building platform shall be subject to Consent Notice under Section 221 of the Resource Management Act 1991.

Vehicle Entrance

10. The existing vehicle crossings servicing Lots 4 and 5 shall be upgraded to a Type G vehicle crossing and shall be constructed to the Standard specified in the Council's Land Development & Subdivision Infrastructure Standard.
11. The unused crossing on Lot 4 shall be removed and the road reserve reinstated with grass.

Advice Note

An application with the appropriate fee shall be made to the Council for a new and or upgraded Vehicle Crossing, and upon approval the vehicle crossing is to be installed by a Council approved contractor at the applicant's cost.

Consent notices on Lots 1, 4, 5 & 6

Lots 1 & 5

12. The consent holder or future owners of proposed Lots 1 and 5 shall comply with the following:
 - a) All buildings on Lots 1 and 5 shall be limited in terms of finish to exterior surfaces, this includes roofs and walls, recessive (shades rather than tints) and colours to have reflectivity values of below 20% for roofs and 40% for exterior walls.
 - b) All new driveways and accessways for Lots 1 and 5 shall finished in rural material and shall be a mid to dark grey in colour.
 - c) All habitable buildings on Lots 1 and 5 shall be single storey and less than 6m in height.
 - d) Only one habitable building (including sleep outs and minor residential units) shall be constructed on Lots 1 and 5.
 - e) Any new habitable dwelling on Lot 5 shall be the same or similar in scale to that of the former dwelling on site.

- f) Water tanks on Lots 1 and 5 shall be recessive shade less than 35% reflectivity and shall be integrated with the dwelling design and either screened or planted from the view from the road, if not located underground.
- g) All external lighting on Lots 1 and 5 shall be hooded or cast down so that no lamp source is visible.
- h) All earthworks on Lots 1 and 5 shall include sediment control measures and be limited in height to 1.5m unless created at a batter of no steeper than 3 horizontal to 1 vertical. Any exposed earthworks shall be grassed.
- i) Fencing on Lots 1 and 5 shall be limited to post and rail or post and batten only.
- j) Habitable building on Lot 5 shall be limited to the areas marked and defined on the survey plan.
- k) Within the next planting season following completion of the dwelling on Lot 1 native planting shall occur along the full extent of the driveway, along the southern side of the driveway on Lot 1. A minimum of two rows of native vegetation at 1m spacings capable of reaching a minimum height of 3m in six years shall be planted. Species should be selected from the coastal zone list in the Taranaki Tree Trust publication "Restoration Planting in Taranaki: A guide to the Egmont Ecological District". This publication is available on the TRC website.
- l) Any habitable building and all curtilage (including but not limited to water tanks, septic tanks and ancillary buildings) associated with the dwelling on proposed lot 1 shall be contained within the area shown as "A" on the scheme plan.
- m) All habitable buildings on Lots 1 and 5 shall be limited to the areas marked on the survey plans.
- n) The landowner or occupier on Lots 1 and 5 will not interfere or restrain activities from occurring on land surrounding the burdened land where those activities are permitted by, and carried out in accordance with, the District Plan, Regional Plans or any replacement plans.
 - a. The landowners or occupier will not:
 - i) Make nor lodge; nor
 - ii) Be party to; nor
 - iii) Finance nor contribute to the cost of;
 Any submission, proceeding or appeal designed or intended to limit, prohibit or restrict activities that are permitted and carried out in accordance with the District Plan or Regional Plans or any replacement plans.

Lot 6

- 13. The consent holder or future owners of proposed Lot 6 shall comply with the following:
 - a) The number of habitable buildings (including minor residential unit and sleep outs) shall be restricted to one, and no habitable building shall be located within 180m of the Leith Road boundary.

- b) Riparian planting and fencing within Lot 6 along the length of the waterbodies (tributaries of the Katikara Stream) shall be retained, maintained and enhanced on an on-going basis.
- c) Any dead or diseased species within the riparian planting (excluding invasive exotic species) shall be replaced as soon as practicable within the next planting season.
- d) Any damaged fencing along the riparian margins shall be replaced to ensure stock proof fencing permanently along the stream margins.

Lot 4

14. The consent holder or future owners of proposed Lot 4 shall comply with the following:

- a) Only one habitable building (including minor residential unit and sleep outs) shall be constructed on this allotment
- b) Fencing shall be limited to post and rail or post and batten only.
- c) All new buildings shall be limited in terms of finish to exterior surfaces, this includes roofs and walls, recessive (shades rather than tints) and colours to have reflectivity values of below 20% for roofs and 40% for exterior walls.
- d) All buildings on Lot 4 shall be single storey and less than 6m in height.
- e) Any new habitable building on Lot 4 shall be the same or similar in scale to that of the current existing habitable building on site.
- f) The landowner or occupier will not interfere or restrain activities from occurring on land surrounding the burdened land where those activities are permitted by, and carried out in accordance with, the District Plan, Regional Plans or any replacement plans.
 - a. The landowners or occupier will not:
 - i) Make nor lodge; nor
 - ii) Be party to; nor
 - iii) Finance nor contribute to the cost of;Any submission, proceeding or appeal designed or intended to limit, prohibit or restrict activities that are permitted and carried out in accordance with the District Plan or Regional Plans or any replacement plans.

Lots 1, 4, 5 and 6 (All lots)

15. The consent holder or future owners of proposed Lots 1, 4, 5 & 6 shall comply with the following:

- a) Each new dwelling shall be supplied with a dedicated firefighting water supply, and access to such supply, in accordance with the New Zealand Fire Service Firefighting Water Supplies Code of Practice SNZ PAS 4509:2008, which must thereafter be maintained.
- b) The Consent Holder or future owners of Lots 1, 4, 5 & 6 shall arrange for cultural monitoring during any earthworks on any allotment. Five days prior to earthworks commencing Nga Mahanga A Tairi hapū shall be notified to allow time to arrange a monitor to be on site.

Note: Cultural monitoring shall be at the consent holder or future owners of Lots 1, 4, 5 & 6.

c) The Consent Holder or future owners of Lots 1, 4, 5 & 6 shall consult with Nga Mahanga A Tairi hapū for any earthworks for services and or buildings within 200m of Puekti Pa (Site ID 197). Nga Mahanga A Tairi shall approve the mitigation measures for earthworks associated with these activities.

d) If archaeological or cultural material is accidentally discovered during earthworks, work in the immediate area will stop and an Accidental Discovery Protocol shall be implemented. Nga Mahanga A Tairi hapū shall be notified.

e) No further subdivision of lots 1, 4, 5 or 6 shall occur while the land remains in the Rural Production Zone or other similar rural zoning.

16. The consent holder or future owners of proposed Lots 1, 4, 5 & 6 shall comply with the following:

a) All planting established and or existing and identified to be retained in accordance with the Landscape Planting Plan [insert name + reference details of Landscape Planting Plan certified in accordance with Condition 23] and the planting set out in condition 14(l) shall be maintained by the owner and shall not be destroyed or removed. The owner shall replace any dead or dying plants with the same species in accordance with the [insert name + reference details of Landscape Planting Plan] and or condition 14(l) within the following planting season.

17. Conditions 12 -16 above shall be the subject of a consent notice under Section 221 of the Resource Management Act 1991 registered against the new record of title for Lots 1 4, 5 & 6 (where applicable) of the subdivision of Part Lot 1 DP 8787 and Lot 1 DP 19869 as identified in the condition and shall be prepared by the Council at the cost of the consent holder.

Riparian Planting

18. Riparian planting and fencing shall occur along the length of the tributaries within Lot 6. TRC riparian guidelines 23, 24, 25, 26 and 41 shall be used as a guide to inform the fencing and planting plan.

19. Fencing shall be stock proof permanent fencing as per the Taranaki Regional Council (TRC) Guidelines.

Mitigation Planting

20. A Landscape Planting Plan prepared by a suitably qualified expert in landscaping shall be submitted by the consent holder to the Development Control Lead and certified prior to the commencement of works. The Landscaping Planting Plan is intended to provide screening and or softening of existing and or proposed built form on Lots 1, 4, 5 & 6. The Landscape Planting Plan shall provide the following:

- Road boundary planting along the frontage of Lot 1 to screen and or soften the future building platforms.
- Identification of existing vegetation on Lot 5 that shall be retained and protected in perpetuity.
- Identification of existing vegetation to be retained (road frontage hedge) until new planting achieves specific heights. The heights that the new planting must achieve before the existing vegetation can be removed shall be identified in the Landscape Planting Plan;
- Plant species, which must all be native varieties and include the numbers, size, spacing, layout and grade;
- Methods of ground preparation, fertilising, mulching, spraying;
- Maintenance and weed management.

All works shall be carried out in accordance with the Landscape Plan certified in accordance with this condition.

21. Prior to issue of certification under Section 224 of the Resource Management Act 1991, the consent holder shall complete planting in accordance with the Landscape Planting Plan certified in accordance with Condition 21.

22. In the event that application is made to the New Plymouth District Council for certification pursuant to Section 224 of the Resource Management Act 1991 before riparian planting and fencing under condition 18 and 19 and/or the planting approved under Condition 20 is completed, then the consent holder shall pay to the New Plymouth District Council a bond in the form of a refundable cash deposit. The purpose of this bond shall be for ensuring compliance with Conditions 18-19 and shall only be entered into if the Council is satisfied that the amount of the bond is sufficient to achieve this purpose, and that 25% of the estimated cost for the maintenance period has been added.

Advice notes

Fire and Emergency staff are available free of charge to advise on means of compliance with the New Zealand Fire Service Firefighting Water Supplies Code of Practice SNZ PAS 4509:2008.

The installation of a sprinkler system is Fire and Emergency New Zealand's recommended means of compliance with the New Zealand Fire Service Firefighting Water Supplies Code of Practice SNZ PAS 4509:2008 in non-reticulated areas.

The applicant has indicated the riparian planting along the waterbodies within Lot 6 will occur alongside discussions and engagement with Te Kahui o Taranaki Iwi Trust.

There is no reticulated water supply available to the site. Any dwelling constructed on Lot 2 will require provision for the water needs of the project in accordance with the provisions of the Building Code. The activity will require you to provide for its own potable water supply in accordance with the standards specified by the Building

Code. Details showing how this is to be provided for will need to be provided as part of the Building Consent application for the project. Bore or well water supply will require a water quality test and results report. No firefighting water is available to this development. It is recommended that a 75mm instantaneous female coupling and valve be fitted to any water storage tanks that may be constructed as part of this work. The requirements of the New Zealand Fire Services Firefighting Water Supplies Code of Practice may have to be met.

The subject property is located in an area of known habitation and there is reasonable cause to suspect the presence of unrecorded archaeological sites. Evidence of archaeological sites may include burnt and fire cracked stones, charcoal, rubbish heaps including shell, bone and/or glass and crockery, ditches, banks, pits, old building foundations, artefacts of Māori and European origin or human burials.

If any activity associated with this proposal, such as earthworks, fencing or landscaping, may modify, damage or destroy any archaeological site(s) (known or unknown), an authority (consent) from Heritage New Zealand Pouhere Taonga must be obtained for the work to proceed lawfully. Under the Heritage New Zealand Pouhere Taonga Act 2014, it is illegal to modify or destroy an archaeological site without obtaining an archaeological authority from Heritage New Zealand Pouhere Taonga. Heritage New Zealand Pouhere Taonga should be contacted prior to work commencing on the subject property. The relevant Regional Archaeologist can be contacted at archaeologist2CR@heritage.org.nz.

A Development Contribution for off-site services of \$2275.44 excluding GST for Lot 1 is payable by the consent holder and shall be invoiced separately. The 224 release of this subdivision will not be approved until payment of this contribution is made.

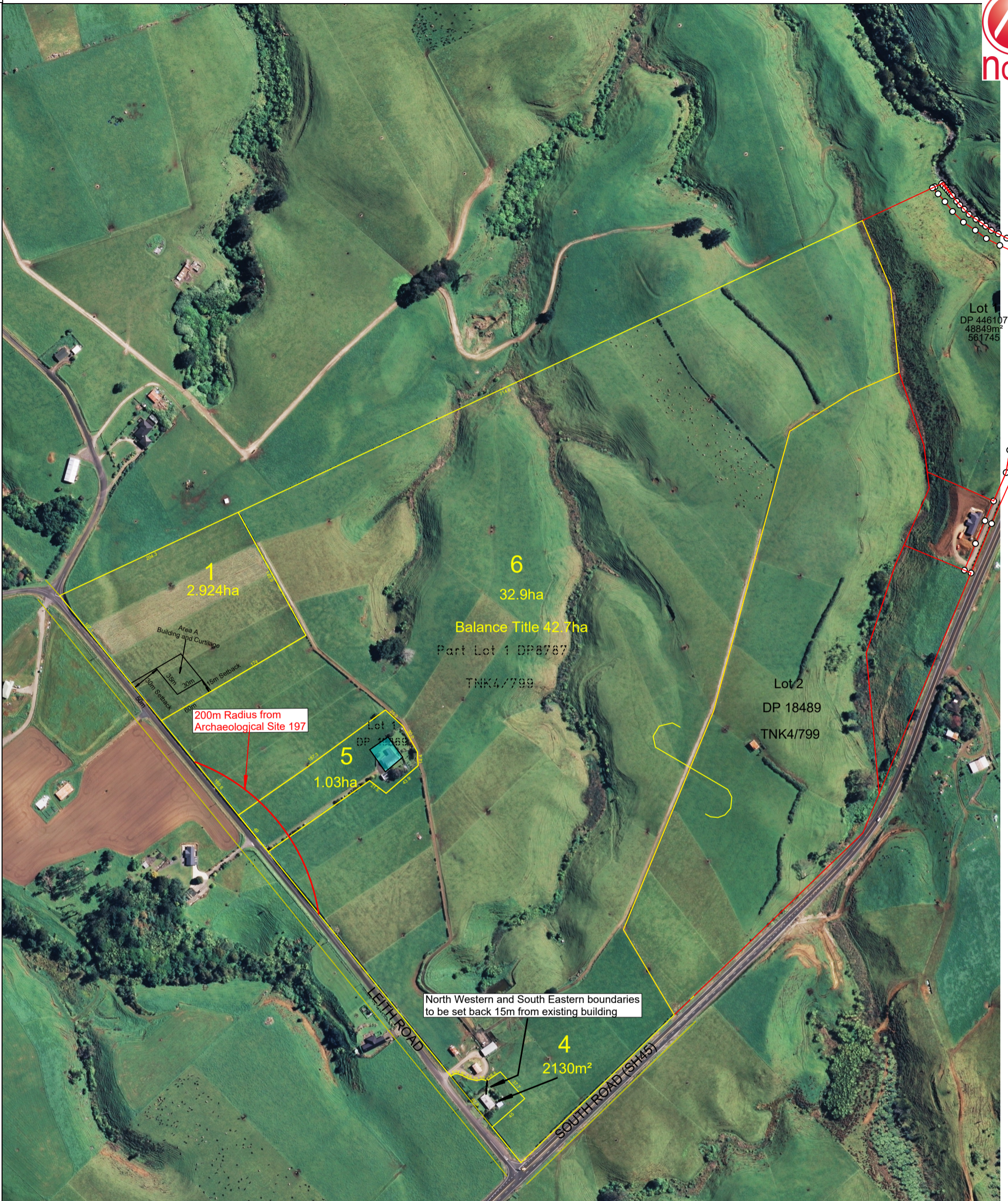
Consent Lapse Date

*This consent lapses on **21 June 2028** unless the consent is given effect to before that date; or unless an application is made before the expiry of that date for the Council to grant an extension of time for establishment of the use. An application for an extension of time will be subject to the provisions of section 125 of the Resource Management Act 1991.*

This consent is subject to the right of objection as set out in section 357A of the Resource Management Act 1991.



Rev.	Date	Revision Details	By	Ver.	App.
03	23/01/2023	Amended boundaries and offsets	RW		
02	23/01/2023	Amended boundaries and offsets	RW		
01	19/05/2022	Addition of Proposed building Area	RW	SPL	
0	19/05/2022	First Issue	RW	SPL	



NOTES:
 1. Subject to Consent from the appropriate Territorial Authorities
 2. Areas & dimensions are subject to final survey
 3. Plan prepared for consent purposes only and should not be relied upon for any other purpose without the consent of Juffermans Surveyors Ltd

Proposed Amalgamation Condition:
 That Lot 6 hereon and Lot 2 DP 18489 (computer Freehold Register TNK4/799) be held in a single freehold register.

JSL
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Client: SIM	Drawing Title: Lots 1, 4, 5 and 6 Being a Proposed Subdivision of Pt Lot 1 DP8787 and Lot 1 DP 19869		Job No: 20198
Site Address: 6 Leith Road New Plymouth	Territorial Authority: NPDC	Comprised in: TNK 4/798 & TNK 4/799	Scale: 1:4000
		Drawing No: 20198-3	Date: 20/04/2023
			Rev: 14