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**BEFORE THE NEW PLYMOUTH DISTRICT COUNCIL
INDEPENDENT HEARING COMMISSIONERS**

IN THE MATTER the Resource Management Act

AND

IN THE MATTER of a request for Private Plan Change NPDC PLC18/00048
by Oakura Farm Park Limited to rezone land at Oakura
within the New Plymouth District

OPENING LEGAL SUBMISSIONS ON BEHALF OF OAKURA FARM PARK LTD

Dated 22 July 2019

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INTRODUCTION

1. These submissions are presented on behalf of Oakura Farm Park Ltd, the applicant in respect of this private plan change (applicant). The applicant seeks to change the zoning of approximately 58ha of currently rural land on the south eastern edge of the Oakura township to a mix of residential and rural lifestyle zoning (plan change).
2. The plan change was lodged with the New Plymouth District Council (Council) on 15 March 2018 and accepted for public notification under clause 25(2)(b) of the Resource Management Act 1991 (RMA). The plan change was publicly notified on 29 June 2018, receiving 436 submissions and 38 further submissions, with 14 submitters supporting the proposal, and the balance in opposition.
3. A series of 5 separate pre-hearing meetings took place on 28 and 29 January 2019 between the applicant and various submitter groupings addressing interests relating to education facilities, equestrian enablement, community impacts, transportation effects and cultural effects.
4. On 31 May 2018 Council's consultant planners Anna Stevens and Hamish Wesley of Boffa Miskell produced a s42A report which recommended that the plan change be approved in part, subject to a series of amendments. In broad terms, the s42A authors support enabling the change in land use promoted under the plan change, but recommend constraints on the scale of change, largely to reflect perceived limits to infrastructure capacity. The supplementary s42A report received on 20 July 2019 confirms the recommendation to approved the plan change, subject to restricting the residential lot yield to 167 lots.
5. Expert witness caucusing in relation to landscape effects and transportation effects were convened on 10 July and 16 July respectively,

with joint witness statements being filed in respect of each caucusing event.

6. Many submitters, a good proportion of whom are local Oakura residents, remain opposed to the plan change, citing the change in character and amenity of Oakura, the impacts on landscape values, and transportation effects arising from the increase in residents in and around Oakura, as reasons why the plan change should be rejected.
7. The applicant will demonstrate through the evidence it presents that there are no material infrastructure constraints that require any substantial reduction in yield from that proposed, and will also demonstrate that the proposal is in line with Council's growth strategy for Oakura, and contrary to some submitters' concerns, the plan change will deliver significant community and environmental benefits for the existing and future residents of Oakura.¹

THE SITE

8. The site is comprised of approximately 58ha located between Wairau Road and SH45, to the immediate south of the Oakura township. The site is located at the foothills of the Kaitake Ranges and falls gently towards the coast.
9. The Wairau Stream passes through the site along the southern portion, while one of its tributaries passes through the site to the northern side of the site running more or less parallel with Wairau Road. A tract of QEII National Trust covenanted bush, in the applicant's ownership, runs along the gully of the Wairau Stream just outside the eastern edge of the site.

¹ The applicant's yield analysis has reduced from the original 399 lot estimate to approximately 320 lots

10. The site is subject to a number of infrastructure easements held by First Gas Ltd, Shell Taranaki Ltd, Liquigas and Powerco in relation to the transmission of gas, petroleum, and electricity through and beyond the site.
11. Lot 29 DP 497629 is the principal parcel of land within the site, comprising approximately 62.5 ha (inclusive of the QEII land of approximately 5.9ha). Lot 29 is the balance farm lot which was created in 2010 as a result of the adjacent 30 lot subdivision called "The Paddocks". This lot is the subject of a consent notice which reflects a condition of that subdivision consent restricting further subdivision of the balance lot while it remains zoned Rural Environment Area. Alongside the plan change application, the applicant has lodged an application to amend the consent notice to reflect the outcomes sought in the plan change application.
12. Access to the site can be achieved via Wairau Road across neighbouring land included in this application, the purchase of which is subject to a heads of agreement, which is conditional on the plan change being approved. Access can also be achieved along SH 45 subject to NZTA approval. The commissioners will hear direct evidence on behalf of the applicant in relation to these matters.

CURRENT ZONING

13. The site is currently zoned Rural Environment Area, which is as the description suggests, a rural zone. A portion of approximately 12 ha of the site is currently recognised in the Operative District Plan as suitable for future residential development, it being subject to a Future Urban Development Overlay, described as the "South FUD" for Oakura as depicted on District Plan maps A61 and Rural E2. The site is also subject to a Ponding Area Hazard, and Wairau Stream is identified as a Priority Water Body.

14. The site sits within the Oakura Structure Plan August 2006 (Oakura Structure Plan), which was incorporated within the Operative District Plan via Plan Change 15 and made operative in 2013. The Future Urban Development Overlay across part of the site (FUD South) was established via this planning process. The Oakura Structure Plan addressed population growth and identified the following issue:

PG1: residential growth should be located away from the sea to protect the natural character of the coast.

15. In response to this issue, the Oakura Structure Plan identified a series of actions or implementation measures, including to:

Encourage future residential development on the land between the existing residential areas in Oakura, the State Highway and the Kaitaki golf course. Future residential development may also occur on the landward side of the State Highway 45.

16. Two Future Urban Development Overlays give effect to this intended outcome, one the FUD West which sits between SH45 and the coast and is adjacent to existing urban development, and the FUD South, which sits within the site at the junction of Wairau Road and SH45 and is also adjacent to existing urban development. The overlays determine that the land subject to the overlay has been identified within the Operative District Plan as a future urban growth area, that is "... Land identified for conversion to residential and industrial/commercial activity...".²

THE PLAN CHANGE

17. The plan change seeks to give effect to the FUD South Overlay area within the site, while also extending that area out towards the foothills of the Kaitaki Ranges and thereby increasing the overall potential residential yield

² ODP – Vol. 1 pg. 126 – Issue 23 – 1st para.

from approximately 117 lots under the FUD South area to a projected 316 lots.³ The proposed changes to the operative District plan include:

- a) changing the zoning from Rural Environment Area to Residential Environment Area (proposed Residential A, C and medium density) where the residential lots will range in size from 300 m² to 700 m²;
- b) changing the zoning from Rural Environment Area to a proposed Rural Lifestyle Area where 12-14 lifestyle sections will act as a buffer between the residential sections and rural land. These sections are intended for equestrian lifestyle living;
- c) change the zoning from Rural Environment Area to Open Space B and C Environment Area for local parks and natural spaces;
- d) change the zoning from Rural Environment Area to Business C Area for a small business area for a local café or farm produce store;
- e) introduction of a proposed structure plan to direct the overall form and layout of subdivision and development;
- f) change in the areas for future urban development provisions and insert additional policies and methods or implementation for the Wairau Estate structure plan to enable the application site land to be comprehensively planned for urban development and to provide for a safe and efficient road transportation network to meet the long-term needs of the Oakura urban area;
- g) change the Residential and Rural Environment Area provisions to provide controls for the height, bulk, location and reflectivity of the buildings and structures in the structure plan area;

³ The notified plan change referred to 399 lots, validated yield analysis is now 316 lots.

- h) change the Business Environment Area C provisions to provide for the control of height and reflectivity of the proposed buildings and structures in the structure plan area;
 - i) install a roundabout and pedestrian underpass at the intersection of Wairau Rd and SH 45.
18. As a result of prehearing meetings held on 28 and 29 January 2019, the proposal has been amended to include;
- a) a bridal path and signage with added service access and easement;
 - b) a potentially new/alternative access via SH 45 which has been investigated with an alternative sequencing of development detailed to reflect this additional access point;
 - c) a possible super staging plan with alternative sequencing of development;
 - d) proposed overlay rules relating to staging triggered by 75% of lots sold and stages three and four not proceeding until the proposed roundabout and pedestrian underpass have been installed.

THE GROWTH CONTEXT

19. In recent decades the Oakura township has evolved from a beachside settlement with traditional bach holiday accommodation to today where the preferred typology is executive style residences for both permanent accommodation or holiday use. The natural setting at the coastal edge with its nationally recognized surf breaks, enjoying the Egmont National Park as a backdrop and being a short 15 minute commute to New Plymouth has long underpinned a demand for housing in the locality.

20. This demand shows no sign of abating, particularly with the recently announced and consented “Green School” at Koru Road, some 6km from Oakura, and the ongoing development of the Oakura to Pukeiti Shared Pathway, known as ‘The Kaitake Trail’. The pathway is proposed as a high-quality walkway and cycle track from Pukeiti down a Council paper road to the coast at Oakura, and is expected to draw annual visitor numbers potentially in excess of 15,000 people. Additional local tourism activity is being driven by the Pukeiti Garden. This is a garden of international significance located between two sections of the Egmont National Park, on a saddle between the main cone of Mount Taranaki and lower Kaitake Range. The Pukeiti Visitor Centre and Café has recently undergone a multimillion-dollar refurbishment. This along with increased promotion has result in a substantial increase in annual visitor numbers from around 30,000 to something in the order of 80,000.⁴
21. Oakura has been identified as a Future Growth Area in the New Plymouth District since at least 2006⁵. The 2018/2028 Council Long Term Plan (LTP) presents a table of areas in the district that have been identified for future growth, and the year that they are likely to be zoned for residential development. The Oakura South FUD area is scheduled to have 158 lots zoned for residential land use in 2019/20. Notably, the Oakura West FUD area is scheduled to be zoned for the release of 390 lots between 2028-2032.⁶
22. Council has recognized the requirement to invest in strategic infrastructure capacity to enable this anticipated growth in Oakura. The currently available infrastructure for reticulated potable water treatment and supply has sufficient capacity to service an additional population of something in the order of 2,900 to 3,400 people. (i.e. 1,279 to 1,489 lots x 2.28 persons).

⁴ Community Board Prehearing Meeting 28 January 2019 – Noted from general discussions.

⁵ Oakura Structure Plan 2006.

⁶ LTP Pg 50

The commissioners will hear evidence regarding the available potable water resource and aquifer capacity, which appear to be the only potentially relevant constraint in terms of the potable water supply.

23. Consistent with the intended population growth at Oakura, the wastewater reticulation capacity has been the subject of a significant investment in the last 20 years, with the establishment of the trunk main between Oakura and the waste water treatment plant at New Plymouth. There are no reticulation capacity issues with wastewater. The full scope of the Plan Change, together with the development of FUD West would require a sewer pump upgrade to meet the full developed sewage demands of the expanded township.⁷ The capacity of the current wastewater system is 1,730 equivalent population; with pump upgrades the ultimate capacity is estimated to be 5,530 equivalent population.⁸
24. With this surplus capacity the Oakura township is arguably over-capitalised with these community assets. In the context of the efficient use of resources and given the current population of 1,380⁹ the current water supply capacity is under-utilised by almost 50 percent and the wastewater infrastructure by some 20 percent.
25. Transport infrastructure at Oakura is also addressed in the LTP. Council has made financial provision for the upgrade of the Wairau Rd/SH45 intersection in 2021. In response to identified growth demands, the LTP states¹⁰:

As the population of the district continues to grow, demand on the transportation network will also continue to grow. We are already aware of limitations to the extent of the network. These limitations are likely to be exacerbated over time.

...

⁷ s42A Report – Appx 7 – Technical Commentary pg.6

⁸ NPDC 1 November 2018 – Email Wesley to Comber.

⁹ Census 2013

¹⁰ LTP page 80

In the interim, to meet our obligations under the NPS – UDC we have identified a requirement for investment in the growth areas listed below.

Oakura growth area- Wairau Rd intersection roundabout-year built
2021-cost \$1.2 million

26. Accordingly, it is clear from Council's recent strategic infrastructure investment, and its long- term infrastructure planning, that Council has identified Oakura as an area where growth is intended, and has been planned for.

THE NPS-UDC

27. The NPS-UDC directs local authorities to provide sufficient development capacity in their resource management plans to meet demand arising from housing and business growth. At the time of lodging the plan change, New Plymouth was a Medium Growth Area under the NPS-UDC. It has subsequently been reclassified as a High Growth Area for the purposes of the NPS-UDC.¹¹
28. As detailed in the s42A report, Council is currently finalising its first Housing and Business Development Capacity Assessment under the NPS-UDC. Due to its direct relevance to the plan change Council has released the Oakura components in draft form ahead of the more recent release of a draft district wide assessment.
29. The draft assessment of housing demand and supply for Oakura is set out in tables 1 and 2 below:

¹¹ See s42A report section 11.3

Table 1: Estimated Housing Demand in Oakura (NPDC, 2019)

	Projected Household Growth	Total Increase Between Growth Time Periods	NPS-UDC Margin	Projected household growth	Total Increase between Growth Time Periods
2018 (existing)	549			549	
Short Term (2018 – 2021)	599	50	20%	609	60
Medium Term (2021 – 2028)	662	63	20%	685	76
Long Term (2028 – 2048)	759	97	15%	796	112
TOTAL		210			247

Table 2: Showing Oakura Growth Area Yield (NPDC, 2019)

	Zone under current DP	Total Area (ha)	Future Yield (lots)	Proposed Start Year	Grade	Feasibility	Feasible future yield
Undeveloped Residential Land Oakura	Res	18.1	158	2018	2	99%	157
Oakura South	Rural/FUD	13.0	117	2020	3	100%	117
Oakura West	Rural/FUD	39.5	355	2032	3	100%	355
Total		70.6	630		2.5	100%	629

30. The s42A authors conclude that¹²;

Based on this assessment, the total anticipated demand for new housing in Oakura in the next 30 years is 210 dwellings and the assessed supply is 630 lots. Therefore, it is assessed there is currently sufficient supply to meet projected demand for housing.

31. This supply and demand assessment is not accepted by the applicant. It has produced evidence from its surveyor Mr Alan Doy who has undertaken a detailed analysis of the supply assumptions contained in the report. He has *ground truthed* the subdivision grading system by applying slope analysis to the subject sites. This has led to a more reliable assessment of the feasibility of development and likely yield as set out in table 3 below;

¹² S42A report section 13.12

	Area (Ha)	HBA (Lots)	Refined by Slope Analysis (Lots)
Undeveloped Residential Land Oakura	17.7	158	134
Oakura West FUD	37.1	355	283
Oakura South FUD	10.5	117	125
	Totals	630	542

Table 3

32. Based on this analysis the actual yield that will be realised for the Undeveloped Residential Land in Oakura, Oakura West FUD and Oakura South FUD will be 88 lots less than that stated in the Housing and Business Development Capacity Assessment 2019.
33. In addition to the factors identified by Mr Doy, the applicant will present evidence from its expert civil and structural engineer, Mr Andrew Fraser, who has undertaken a review of the overall costs associated with developing the Oakura West FUD area. Mr Fraser gives evidence confirming that several large culverted stream crossings, combined with steep contour adjacent to the unnamed tributary, will mean major earthworks are required for access to the development cell. These same infrastructure hurdles affect development of the residentially zoned land adjacent to the West FUD.
34. It is also noteworthy that in councils LTP, the Oakura South FUD area is scheduled to have 158 lots zoned for residential land use in 2019/20, while the Oakura West FUD area is scheduled to be zoned for the release of 390 lots between 2028-2032. Accordingly, while the overall supply of residential land in Oakura may have the potential to meet the NPS-UDC requirements, the supply associated with the Oakura West FUD will not meet short to medium term demand. For Council to meet its short to

medium term obligations under the NPS UDC, enabling residential development within an extended Oakura South FUD is the most appropriate way to achieve this national policy requirement.

REGIONAL POLICY STATEMENT

35. The Taranaki Regional Policy Statement (RPS) became operative in 2010. Section 15 deal with the built environment. The lead objective, SUD Objective 1 is: *to promote sustainable urban development in the Taranaki region*. This objective is given effect to through the following series of related policies;

- a. encouraging high quality urban design, including the maintenance and enhancement of amenity values;
- b. promoting choices in housing, workplace and recreation opportunities;
- c. promoting energy efficiency in urban forms, site layout and building design;
- d. providing for regional or significant infrastructure;
- e. integrating the maintenance, upgrading or provision of infrastructure with land use;
- f. integrating transport networks, connections and modes to enable the sustainable and efficient movement of people, goods and services, encouraging travel choice and low-impact forms of travel including opportunities for walking, cycling and public transport;
- g. promoting the maintenance, enhancement or protection of land, air and water resources within urban areas or affected by urban activities;
- h. protecting indigenous biodiversity and historic heritage;
- i. avoiding or mitigating natural and other hazards.

36. This set of objectives and policies within the RPS are given effect to through a range of methods, including SUD Method 5 which is to;

Include in district plans or resource consents, provisions or conditions that address sustainable urban development issues including among others:

- a. objectives, policies, methods, rules and performance standards controlling land use, development and subdivision;
- b. building and development controls or criteria;
- c. Esplanade reserves or strips or access strips;
- d. designations or other provisions for public works.

37. As will be demonstrated by the various experts presenting evidence on behalf of the applicant, the plan change gives effect to this set of RPS objectives and policies by implementing SUD Method 5, and incorporating appropriate objectives, policies, rules and methods into the Operative District Plan.
38. The s42A report identifies a number of additional regional policy provisions which are considered relevant, including objectives and policies relating to fresh water¹³, objectives and policies relating to natural features and landscape, historic heritage and amenity value¹⁴, and objectives and policies relating to resource management issues of significance to iwi authorities¹⁵.
39. The s42A report indicates that these provisions have not been adequately addressed in the plan change application. The applicant's planner, Mr Colin Comber will address these further RPS matters in his evidence, and demonstrate how these RPS provisions are being given effect to through the plan change.

TAIAO, TAIORA

40. The Taranaki Iwi Environmental Management Plan *Taiao, Taiora* was launched in July 2018, some months after the request for the plan change had been completed and lodged with the Council (March 2018).
41. The Assessment of *Taiao, Taiora* against the plan change demonstrates a high level of alignment between the relevant provisions of the Iwi Management Plan (IMP) and the planning and urban design approach

¹³ Section 6 - WAL Objective 2, WAL Policy 3

¹⁴ Section 1 - -AMY Objective 1, NFL Policy 2 and AMY Policy 1

¹⁵ Section 16-TWO Objective 1, TOW Policies 1 and 2, KTA Objective 1, KTA Policy 1, CSV Objective 1, CSV Policies 1 and 3

proposed for the site. The Letter of Response from Te Kahui o Taranaki acknowledges the mitigations proposed.

42. However, within the IMP, at Section 11.8 Taranaki Mounga, Policy 11.8.3.7 states:

Taranaki Iwi will not support any residential subdivision and development within 5 km of the National Park boundaries.

43. That Taranaki Mounga is a taonga for Taranaki Iwi is respectfully acknowledged by the applicant, as is the Iwi position to not support the proposed rezoning of the site.
44. It is important to consider this policy within the local context, noting that all of the Oakura township is within approx. 2.5kms of the National Park boundary, including the existing FUD West area and FUD South area.
45. As Mr Comber, the applicant's expert planning witness observes, from a policy development and plan-writing perspective it is noted that the subject policy does not acknowledge the existence of a township which has been in existence for over 100yrs. Not only do existing use rights apply to all lawfully established uses, but the current Operative District Plan provisions, developed after an extensive consultative process with all the Iwi and Hapu of the District in the early-mid 1990's, provide for residential subdivision and development within the suggested 5km setback.
46. Moreover, the policy to 'not support' any residential subdivision development within 5km of the National Park boundaries does not equate to outright opposition to such activity. In Mr Comber's opinion the plan writers have been very careful in their choice of words, with *Taiao*, *Taiora* not establishing a policy of opposing development, but rather, not offering support.

47. Against that policy context, the applicant has ensured development will occur in a manner sensitive to Taranaki Iwi cultural values. Mr Comber will point to a number of factors that demonstrates that the applicant is able to satisfy any cultural concerns in a very positive way.
48. The first factor relates to the issue discussion in the IMP (ref 11.8.1), and Issue 5 in particular, which is concerned with new developments from human activity on and around the *Mounga* impacting on the natural environment and the important cultural value the Iwi associates with Taranaki Mounga. In its response to the assessment of the Plan Change against *Taiao, Taiora*, Te Kahui o Taranaki have approved of the mitigations proposed within the Plan Change. This suggests to the applicant that from the Iwi perspective they are satisfied there will be no adverse impacts on the relevant natural environment arising from the proposed development.
49. Further, Mr Comber will note that in their response Te Kahui have not identified any concerns with regard to potential or actual adverse cultural impacts. From this he takes their position of 'not supporting' to be one of principle, in deference to Policy 5. This is acknowledged and understood by the applicant. As the s42A report correctly notes, at the pre-hearing meeting on 29 January 2019 the Taranaki Iwi representatives reviewed the applicant's proposed mitigation measures set out in the *Taiao Tiaora* Assessment Report, and approved those measures.¹⁶
50. Mr Comber also observes that the Ngati Tairi Hapu has not expressed at any point through the consultation phase, any 'in principle' concerns about the Wairau Estate development and its location. The Hapu's submission regarding stormwater design has been discussed with Kaumatua Keith Manukonga subsequent to the prehearing meeting in January 2019. An undertaking has been given by the applicant to review and refine the design of the stormwater detention areas to optimise environmental

¹⁶ S42A Section 11.16

outcomes. The Applicant notes and agrees to the recommendation for an overall stormwater plan for the Structure Plan Area at the outset of subdivision.

51. Accordingly, the applicant agrees with the conclusion reached in the s42A report that the plan change and proposal takes into account the relevant matters required under Taiao, Taiora.¹⁷

THE OPERATIVE DISTRICT PLAN

52. The Operative District Plan provisions relating to the site are not the most appropriate way to achieve the purpose of the RMA, nor are the provisions the most appropriate way to achieve some of the higher order and well settled objectives in the Operative District Plan.¹⁸
53. Of particular relevance is the ODP approach to growth management. The main planning technique used to preserve and protect land resources for future urban development is the use of a Future Urban Development Overlay relating to future urban growth areas identified in strategic planning documents like the Oakura Structure Plan, identifying those FUD areas on the planning maps, and use policies and rules to protect the mapped areas.¹⁹
54. Method 1.2(c) establishes rules specifying that the future rezoning and subsequent development of the FUD areas is not compromised by inappropriate development adjacent to the FUD area overlay, while Method 1A.3(b) similarly protects land within the FUD. This reflects objective 1A which is:

¹⁷ S42A report section 11.17

¹⁸ As required by s32(1) of the RMA

¹⁹ Method 1.1(c)

To ensure that activities within and adjacent to the Future Urban Development Overlay do not adversely affect the ability to rezone and subsequently develop areas identified as Future Urban Growth Areas.

55. This objective is supported by a series of policies which protect the land resource within the FUD area from inappropriate subdivision and use.²⁰
56. Next, the ODP addresses the activation of the FUD areas for development. It identifies issue 23; *the need to comprehensively plan for future urban development. This issue is addressed through objective 23 which provides;*

That land identified for future urban use is comprehensively planned to facilitate an integrated approach to land development while addressing site specific issues to provide for accessible, connected, efficient, liveable communities and coherent urban spaces.

57. This objective is then supported by policy 23.1 which is;

To control the design and layout of urban areas through structure plan is to allow for the comprehensive development of area by ensuring;

- a. The type, location and density of the development is suitable for the site;
- b. infrastructure is provided in a coordinated manner by considering location, type and staging;
- c. development considers topography and minimises changes to the landform;
- d. that the constraints are identified and managed to ensure resilient and safe communities;
- e. interfaces with surrounding land uses are assessed and personal effects are mitigated;
- f. open space, parks and esplanade reserves or strips are provided for;
- g. collectivity and accessible urban form as provided for;
- h. that special features are recognised and that those features of particular significance are protected.

58. While this objective and policy framework for FUD areas appears effective, it is not particularly well integrated with the rule framework. For example, subdivision of land within a FUD area is a non-complying activity.²¹ In other words, the operative provisions preserve and protect the resource, but do not enable its transformation to residential land use.

²⁰ Policies 1A.1, 1A.2, 1A.3

²¹

59. In addition, the mapping of the Oakura FUD South area is problematic, and gives rise to challenges in giving effect to the related objectives and policies for the FUD area.
60. The triangular shape of the 12ha FUD area within the site appears to have been done for plan drafting convenience and does not take account of the topographical features or legal boundaries of the affected property. The Technical Assessment undertaken on behalf of Council by Beca in 2008²² studied the 12Ha Oakura FUD South area and concluded:

A.2.3.8 – Area H

In fact the proposed extended boundary is an artificial construct and perhaps 50 ha of the 82 ha property which includes Area J²³ and extends inland from the State Highway is suitable for residential development. This covers land up to the 60m contour above which water supply would require an additional reservoir. Any development proposal should have provision for extending the roading network beyond the presently proposed boundary.

61. As required by Objective 23 of the ODP, land identified for future urban use is to be comprehensively planned to facilitate an integrated approach to land development, while addressing site specific issues to provide for accessible, connected, efficient, liveable communities and coherent urban spaces.
62. As detailed in the plan change request, the shape of the FUD Area does not readily lend itself to achieving Objective 23.²⁴ This shape constraint was recognised by Beca in 2008, as was the suitability of the applicant's property, a large land holding in single ownership, for a more expansive residential development than contemplated by the Oakura Structure Plan 2006.

²² Oakura Action Plan: Technical Appraisal October 2008 – Pg. 13

²³ 'Area J', this is the area of 24 lots known as 'The Paddocks'

²⁴ Request – Pg.23-30, S32 Evaluation Report

63. Development of the existing FUD area was evaluated as option 2, set out at section 4.3.5.2 of the plan change request. That evaluation concluded that changing the use of the FUD area only would be an inefficient use of resources for the following reasons:

- Removing the approx. 12ha FUD area from the current 52ha effective area dairy farm would leave an area of some 40ha for pastoral use. This is most likely to render dairy farming on the property uneconomic. In such circumstances, the most likely pastoral use would be the grazing of dry stock. This would not require a full-time labour input. The existing dwelling on the property would then either be vacant, or at best, rented to a household that would need to find employment off the property.
- Assuming the primary roading connection would come from Wairau Road (through 132 Wairau Rd as is currently proposed), any local roading layout would be somewhat inefficient as the majority of new lots would be located toward the state highway (western boundary), with the lots along the eastern boundary perhaps being limited to a single section depth fronting a local road. If the natural gully systems are to be preserved a disproportionate length of the internal roading would be of the cul-de-sac type, limiting the efficiency of traffic movement.
- Adopting the ratio of 10 sections per ha inclusive of roads and open space (e.g. public reserves) this 12ha area (Oakura Farm Park land only) would yield approximately 120 sections. Using a figure of 2.67 persons per household 16 this would, in time, add approximately 320 persons to the 1,476 persons (22% increase) comprising the permanent population of Oakura Township at the time of the last Census.
- While a 22% increase in additional residents would provide a positive economic and social impact to the township, the associated increase in traffic numbers would be unlikely to justify the roundabout and pedestrian underpass proposed with a larger development. Thus, traffic inefficiencies (traffic delays and increased probability of crashes) could be expected at the Wairau Road-SH45 intersection and increase risk for pedestrians crossing SH45 'on-grade' in the vicinity of the Wairau Rd intersection.
- Given the smaller area available for residential development (by comparison to utilising the whole of the subject property) would limit the options for choice of site size. It would most likely be both impractical and uneconomic for the developer to include any Rural Lifestyle lots in a development of such reduced size.
- While extending a trunk sewerage system eastward across the State Highway could most likely be carried out economically, the extension of the water supply from 'The Paddocks' development westward to the FUD Area would be inefficient as it would result in an un-utilised section of several hundred metres of trunk main between 'The Paddocks' and the FUD Area.

- It could be expected that, over the long term, the pressure for outward residential expansion would see the balance of the subject property utilised for residential settlement. It could be anticipated this delayed but inevitable demand would necessitate an upgrading of various trunk infrastructure (e.g. water supply, sewer, electricity and possibly access roading etc). Having to increase these various capacities at a later date would most likely be an inefficient use of resources by contrast to planning for and installing all the necessary services for the entire area (as proposed) in a sequential manner consistent with the demand and uptake of the lots over the larger site.

64. In addition to these matters identified in the plan change request, Mr Comber notes that the constraints of the 12ha FUD area lead him to conclude that achievement of Objective 23 would be better enabled if a wider and more comprehensive approach was adopted in respect of the site, and particularly while the land was undivided and in one ownership. He observes that there are a number of examples within Oakura itself where sub-optimal urban development has occurred through successive 'nibbling' (by subdivision), particularly where land is in smaller greenfield lots and in multiple ownership. This has resulted in residential areas that fall short of the primary aim of Objective 23. This is particularly in evidence from the numerous cul de sacs through the Oakura urban area.
65. Accordingly, the current district plan provisions are not the most appropriate to achieve the higher order objectives 1, 1A and 23 and do not enable sustainable management of the resource in terms of s5 of the RMA. The provisions work well to protect and preserve the resource for future use and development, but once the time comes for that development to occur, the provisions are not enabling, and not the most appropriate in s32 RMA terms. On this basis, changes to the plan are required.

THE ISSUES

66. The plan change has attracted substantial opposition, principally from local residents of Oakura who seek to retain the existing character and amenity of Oakura which they presently enjoy. They see the proposal as a threat to

that enjoyment and those aspects of living at Oakura which they value. That motivation is understood. Change can be challenging. The applicant is confident however that the change can be sensitively managed over time, and that the plan change will ultimately deliver community benefits which do not threaten those character and amenity values of Oakura that make it special.

67. The s42A report describes the key issues arising from the submissions as being²⁵:

- a. The appropriateness of rezoning the land and the scale and density of development
- b. traffic, parking and access
- c. landscape values and visual impacts
- d. noise
- e. open space and reserves
- f. service infrastructure and stormwater
- g. Oakura school capacity and community infrastructure
- h. ecological impacts
- i. historic heritage
- j. social impacts.

The appropriateness of rezoning the land and the scale and density of development

68. The general theme running through the submissions in opposition is that the scale and density of the proposed development is unnecessary and inappropriate for Oakura and will give rise to significant adverse effects on its character, amenity and existing infrastructure.

69. New Plymouth is a high growth council in terms of the NPS-UDC. It has an obligation under policy PA1 to ensure that at any one time there is sufficient housing and business land development capacity in the short,

²⁵ S42A report ;section 1.9

medium and long-term. For short and medium term purposes, this means development capacity must be feasible, zoned and either serviced or with funding in place to be serviced.

70. Council's capacity analysis in respect of Oakura suggests that there is sufficient capacity to meet the coming demand for housing in the area. This capacity analysis over estimates the supply side, and must recognize that the supply identified within the FUD areas at Oakura are not currently zoned, nor serviced. The FUD West cell has feasibility constraints and in Council's LTP is not scheduled for residential zoning to begin until 2028.
71. These supply constraints, in combination with the identified demand for residential housing opportunities at Oakura, means Council's short to medium term capacity obligations under the NPS-UDC are certainly not being met in respect of this identified growth node within the district.
72. The plan change takes the identified growth cell of the FUD South area and moves it to a state where it presents residential land use capacity which is feasible, zoned and serviced²⁶. The scale and density of the proposal responds positively to these capacity demands by providing a range of section sizes and residential land use typologies. The plan change also addresses the timing of the release of sections through a staging mechanism which integrates lot supply with the extension of infrastructure services. Staging occurs over 15 stages, with each stage ranging from 15 to 30 lots, with the rural lifestyle lots spread over two stages of between 6-8 lots.
73. This staging mechanism allow supply to match demand, while providing an underlying blueprint for the future urban form. In this way the changes at Oakura are well understood by all, take effect gradually, and are integrated with the provision of public infrastructure and amenities.

²⁶ NPS -UDC Policy PA1

Traffic Parking and Access

74. As originally formulated the plan change proposed a roundabout for the intersection of State Highway 45 and Wairau Road with an accompanying pedestrian underpass under State Highway 45 which serve pedestrian and equestrian connectivity requirements between the site and its surroundings, and the coast line. Internal collector roads and local roads would address internal traffic movements, with access into the site being achieved via Wairau Road and a connection through an existing lot, known as the Thurman property.
75. The original traffic assessment was based on the yield of 399 lots with traffic generated at a rate of 8.5 trips per lot per day. The applicant accepts that the number of lots used in this assessment is in excess of the likely yield and accordingly the traffic volumes identified in the original TIA can be considered at the high end of that likely to be generated.
76. The TIA has demonstrated that the intersection of Wairau Road and State Highway 45 level of service would drop to a level D if the proposal was considered in isolation, while further potential increase in traffic from other sites, including the FUD West, would take the level of service to an F, meaning unacceptable delays.
77. To mitigate these effects a roundabout is proposed to be constructed at this intersection which improves the ultimate level of service to B, and which provides for pedestrian and equestrian needs. This infrastructure outcome is consistent with councils LTP, which signals \$1.2M in funding for a roundabout at this location in 2012.
78. Submitter concerns were largely focused on network safety and efficiency effects arising from the increased traffic volumes on and around Wairau Rd. Of particular concern were effects on Donnelly Street and the safe

pickup and drop-off of children at school. Wider effects on the network, including parking and efficiency in relation to the village and beach area are also identified as being of concern.

79. A pre-hearing meeting was held on 29 January 2019 between the applicant, Council, NZTA and the National Road Carriers Association. The focus of that meeting was to address the impacts on the State Highway network. During that meeting the applicant advised that preliminary work has been undertaken in respect of an alternative access from State Highway 45, further south from the intersection of Wairau Road, which would provide a secondary access point to the site, and one which could be readily upgraded to a further roundabout to service both the plan change area and the Oakura West FUD area once it was activated. All parties indicated support for pursuing further investigation of this option.
80. The applicant has undertaken further investigations and will present evidence from its traffic engineer confirming that the proposed additional access on to state Highway 45 can meet the Austroads technical requirements, subject to further detailed topographical survey work being undertaken which may indicate a requirement for some adjustment to the highway vertical elevation over a short distance in order to achieve requisite sightlines.
81. This additional access connection is supported by Council, with the section 42A author confirming²⁷;

Taking all these factors into account, overall, I consider the traffic, parking and access effects can be effectively managed through the implementation of various methods. I consider splitting access from the proposed development between SH 45 and Wairau Road to be an appropriate response to the issues raised in submissions and technical advice. In addition creating a through road which connects with SH45 and Wairau Road is a more resilient transport network than a single (Wairau Road) access point.

²⁷ Section 42A Report para 13.58

82. Caucusing of traffic experts was then directed. That caucusing occurred on 16 July 2019. In attendance were experts on behalf of the applicant, Council and NZTA. Unusually, also in attendance was one personal submitter, Mr Gladstone. Mr Gladstone has submitted in opposition to the plan change (submission #64). He clearly has transportation expertise, and has produced evidence of that nature. However, the applicant reserves its position as to the appropriateness of his involvement in caucusing, and the impacts that may have had on the quality of the outcome of that caucusing exercise. It is clear from the joint witness statement that while there was some level of agreement between the experts, there now remains much in dispute.
83. It appears from the joint witness statement that there is now dispute or uncertainty surrounding the efficacy of the originally proposed roundabout treatment, and the alternative or additional access directly to SH45 appears to have lost traction with NZTA. These will be matters which the commissioners will be required to resolve ultimately, with the assistance of those experts at this hearing.
84. On review of the joint witness statement, it appears that much of the detail in dispute are matters which would be addressed or resolved through a detailed design process which would be addressed at resource consent stage. For the purposes of the plan change, the applicant's position remains that its originally proposed transport solution in respect of the Wairau Rd SH 45 intersection is achievable, and consistent with councils LTP strategy, while the additional connection onto SH 45 is also achievable, creates resilience in the network, and future proofs a further connection enabling access to the West FUD area once it is activated.
85. The applicant supports the conclusions set out in the section 42A report which confirm that traffic, parking and access effects can be effectively managed through the implementation of various methods.

Landscape values and visual impacts

86. The defining aspects of the site are its gently sloping northern orientation, the presence of waterways, its State Highway frontage, and close proximity to urban Oakura as well as the Kaitake Ranges, which are identified as part of the Outstanding Landscape (OL) in the Operative District Plan.
87. Landscape character effects from the development are reduced by the connection to Oakura Township, the Future Urban Development overlay that anticipates landscape change, the protection and enhancement of waterways, and the use of an 'equestrian zone' that provides a 'soft' urban/rural interface. The construction of the proposed noise attenuation bund along SH45 creates a potential loss of character by reducing views of the OL, but provides a landscape benefit by reducing views of the urban development, and importantly serves its primary function of managing noise effects and avoiding reverse sensitivity.
88. It is important to note that the proposal is not located within an OL. The applicant's landscape expert, Mr Richard Bain, will give evidence confirming that the characteristics and qualities that contribute to the Kaitake Ranges as an OL are not adversely impacted by the development. He considers that the scale of the ranges is such that they will not be subsumed by the development.
89. Mr Bain acknowledges that the landscape and visual effects of the proposal are self evidently significant as rural land changes to urban. However, with the proposed layout's focus on varying land use intensity based on context, the character effects are contextually appropriate, and visual effects are able to be mitigated.
90. Those landscape effects are largely self-evident. Open paddocks will become residential development, a pattern typical of urban fringe New Zealand. Mr Bain considers that while the overall landscape change is

significant, the effect of this change is contextually appropriate, given the site's proximity to Oakura. The important biophysical aspects of the site, in particular the stream network, are acknowledged and integrated into the structure plan, which also recognises the importance of the rural/urban interface provided by the 'equestrian zone' that creates a gradual transition from urban to rural.

91. Contrary to submitter concerns, Mr Bain observes that of particular importance in reducing landscape character effects is the proposal's extension beyond the FUD boundary. The FUD's southern boundary is an arbitrary (in terms of landscape) straight line connecting land north of the State Highway (that has FUD overlay) to the existing urban area on Wairau Road. This line does not follow any landscape rationale - it cuts across streams and takes no account of topography or how a future urban/rural interface may occur. The Structure Plan seeks to work with topography (the indicative road pattern has been developed to potentially minimise earthworks), and the site's boundaries consider their context. The proposed State Highway boundary treatment is a 2m noise attenuation bund to avoid a reverse sensitivity setback of 80m that would otherwise be required by NZTA.
92. Mr Bain considers that the effects on the Kaitake Ranges, within an OL, are limited to perceptual aspects, as the site itself is not located within an OL. Any potential effects of the proposal on the characteristics and qualities that contribute to the Kaitake Ranges value as an outstanding landscape will be subsumed by the scale of the ranges, as well as the other buildings in the area (such as the houses in The Paddocks).
93. Council's s42A report indicates that in Council's view, the landscape impacts are significant, although the conclusion was informed by an incorrect characterization, since corrected, of the noise attenuation bund

being up to 4m high, when it is fact set at a 2m height. Notwithstanding that assumption, the s42A report acknowledges that²⁸:

..to some degree, these impacts are anticipated by the Operative District Plan by identifying part of the plan change area a FUD. However, the extent of the proposed development is much larger than the FUD area and will change the local character in the immediate area. These landscape and visual impacts also need to be considered in the overall evaluation of the plan change, including benefits of the provision of additional housing and open space.

94. Subsequently, on 10 July 2019 the landscape experts for the applicant, Council, and a submitter group, caucused as directed and produced a joint expert witness caucusing statement. It is evident that there remains disagreement in respect of the extent of any adverse effects on landscape character, and the appropriateness of the scale and extent of the development in this context. All experts agree that the site is not located within an area of outstanding landscape, however the experts for Council and the submitter group consider its proximity to be highly relevant. The experts do not agree about the extent of adverse effects on the views of the Kaitaki ranges.
95. Ultimately, the extent of any adverse effects on landscape character and amenity will be a matter for the commissioners to determine, and to the extent that adverse effects are identified, those will be weighed as part of the assessment of the benefits and costs that are anticipated from the implementation of the proposed provisions.²⁹

Noise

96. Under the current rural zoning, the site is not subject to any Operative District Plan noise standards, and subject only to the controls established under section 16 of the RMA.

²⁸ S42A Report para 13.70

²⁹ S 32(2)(a) of the RMA

97. The plan change gives rise to two distinct noise related issues. The first, raised by submitters, is the potential for additional noise to be generated as consequence of the residential land use and associated traffic movements. The second issue relates to the NZTA guidelines for managing the effects on noise sensitive land use on the State Highway network.
98. In terms of the additional noise generated as a consequence of the residential land use activities, any concerns are unfounded. The rezoning of the site to residential and business zones will carry with it the Operative District Plan noise limits, which must be complied with. Additional traffic will not generate noise which is out of character with the area. Construction noise will be controlled in accordance with Operative District Plan noise limits (NZS6803:1999) applying to those activities.
99. Reverse sensitivity issues arising from the location of noise sensitive land use near the State Highway will be mitigated and avoided through the establishment of a 2m high noise attenuation bund running along the boundary of the site adjacent to SH45.

Open space and reserves

100. The open space and reserves features of the plan change are a core element of the amenity and community enablement which will be delivered through the development of the site.
101. The development contains open space and reserves in the form of a proposed neighbourhood park, which has a proposed Open Space B Environment Area zoning, and which will provide important amenity within the neighbourhood. The site also contains a network of gully areas with associated tracks which have a proposed Open Space C Environment Area zoning. These gully reserves form part of the wider network of open space corridors at Oakura. A number of submitters have raised concerns

regarding the potential for conflict between horse riders and cyclists and pedestrians.

102. A pre-hearing meeting was held on 28 January 2019 between the applicant, Taranaki Equestrian Network and Council's Open Space and Reserves team. The purpose of that meeting was to resolve any issues relating to the integration of the open space network with the equestrian access and bridle tracks which are an important feature of the proposal.
103. These matters have been satisfactorily resolved, including how to manage the shared use of the Wairau Tributary and Wairau Stream esplanade reserves in terms of the potential conflict between horse riders and cyclists.
104. Council's Open Space and Reserves team have recommended taking an esplanade reserve along the Wairau Stream at a width which is sufficient to form a shared pathway which will accommodate both equestrians and pedestrians that without giving rise to any conflict. The bridle trail has been depicted in the plan change concept plans and the section 42A report confirms that these amenity aspects of the plan change will provide quality open space for future residents of the plan change area as well as for other Oakura residents.³⁰

Service infrastructure and stormwater

105. The plan change proposes that the water supply and wastewater would be connected to the existing reticulated networks and systems at Oakura, with stormwater being managed on site within individual lots. Stormwater generated from roadways will be managed via rain gardens and sub surface stormwater soakage, while overflow will be treated through secondary mechanisms in the gully systems which will ensure hydraulic neutrality.

³⁰ section 42A report para 13.89

106. Submitters raise concerns regarding the risks associated with increased stormwater flows, including increased risk of flooding, and downstream impacts particularly at the discharge point at Oakura Beach. Concerns have been identified in respect of the potable water supply, particularly in terms of constraints on the available capacity of the aquifer which supplies the area.
107. Wastewater generated from the plan change area will be discharged to the public reticulation system. The existing water mains on Pahakahaka Drive and Wairau Road have sufficient capacity to support the residential development, while an upgrade to the existing pump stations at Shearer reserve and Corbett Park will be required to service the entire development. Once these upgrades are completed the pump stations would then have sufficient capacity to support not only the plan change area, but also any future development of the West FUD area.
108. The issue of stormwater was addressed at a community prehearing meeting on 28 January 2019, where downstream effects, particularly at the discharge point, were addressed in some detail.
109. The applicant has emphasised that its engineering experts confirm hydraulic neutrality will be achieved, and that attenuated flows will not be of a greater velocity than predevelopment. In respect of any perceived risk of increased erosion, the applicant's experts confirm that the existing stream environment is stable, and with the risk of erosion primarily being a factor of velocity rather than flow time, these risks remain low.
110. Accordingly, the applicant remains confident that through the combination of proposed plan change provisions and suitable resource consent conditions which will be imposed that at the time of subdivision and land use, all adverse stormwater effects can be appropriately mitigated.

111. The plan change area will be serviced with reticulated potable water in the form of a loop feed extending from the existing 150ml diameter reticulation on Wairau Road, and the existing 200ml diameter reticulation on Pahakahaka Drive.
112. Supply is derived from a local aquifer, with two bore pumps which have a combined maximum capacity of 3840 m³ per day and a treatment plant with a capacity of up to 3500 m³ per day. Two reservoirs provide a total of 2500 m³ of storage. As a result of bore testing, Council has set a sustainable daily extraction rate of 2506 m³ per day. Current daily average use is 743 m³ per day, with a peak of 1497 m³ per day.³¹
113. According to Council's calculations, 1279 lots generates a peak day demand equal to the proven aquifer yield of 2506 m³ per day. Existing residential lots together with the greenfields zoned Residential land (currently unserviced) at Oakura total 945, leaving a notional yield capacity for an additional 334 lots. Council proposes that a *fair distribution* of this capacity is for it to be split evenly between the West FUD and the South FUD; i.e. each future development area is allocated 167 lots. This approach underpins Council's overall conclusion in respect of scale and density within the plan change area. Based on this approach Council recommends that the plan change area be limited to a yield of 167 lots.
114. This is an entirely arbitrary basis for allocating potable water capacity. Furthermore, as a single proxy for determining the appropriate size, scale, and yield of a development area, this reasoning is fundamentally flawed, and is contrary to the requirements of section 32 of the RMA.
115. Put simply, it is an inefficient and an unsustainable management of the natural and physical resources of the district to potentially sterilise a

³¹ section 42A report appendix 7

resource which could otherwise be used for community benefit, on the basis that a developer may possibly at some stage in the future, decide to develop land for residential purposes. This idea of 'picking winners' and allocating network capacity is contrary to the concept of sustainable management. It is no different to identifying sufficient capacity in the transport network to enable a particular development to proceed without a network upgrade, but denying access to the network because that capacity has been *allocated* to some other future user who may want to exercise that right in the future.

116. This is flawed logic and it should be rejected by the hearing commissioners. Based on Council's own assessment of capacity, the aquifer yield can support an additional 334 lots at Oakura. If those first 334 lots are delivered via this plan change area, subject to the appropriate assessment of the costs and benefits under section 32 of the RMA, that is a perfectly acceptable outcome in resource management terms.
117. Council's approach to this issue is also unduly conservative. The additional 334 lots is calculated after applying a peaking factor of 2.33 which is significantly higher than the actual historic peaking factor of 2.10. If the 2.10 peaking factor is applied, the revised capacity is capable of servicing 1418 lots.
118. As Mr Comber sets out in his evidence, based on Mr Doy's revised yield assessment figures for the existing vacant residentially zoned land, downgraded from 158 lots to the more realistic 134 lots, the available aquifer capacity is 497 lots. Using Council's approach and split 50/50 between the FUD West and FUD South area, each future development area would be allocated 248 lots.³² Even this approach has a degree of conservatism, because it fails to recognise the discount to be applied to infill capacity due to feasibility and land owner preferences. Also, it fails to

³² statement of evidence: Comber dated 17 June 2009 paragraphs 136 – 152

recognise the significant limitations associated with development of the residential land adjacent to the West FUD, which relies on the West Fud being developed. Accordingly, even this notional allocation of aquifer capacity wastes capacity on land which will never be developed in the short to medium term.

119. While the applicant does not agree with this methodology for the allocation of resources, it is prepared to consider a rules-based mechanism within the plan change which would address this potential capacity issue. The Applicant proposes setting an overall yield limit of 316 lots, as requested. These lots would be subdivided as a controlled activity, with residential land use a permitted activity. Beyond 248 lots, subdivision and residential land use would be a restricted discretionary activity, with discretion restricted to an assessment of the aquifer capacity and potable water availability. The applicant also proposes the introduction of water harvesting techniques, greywater reuse, trickle feed reticulation and storage, and water consumption improvements as additional measures which can be introduced at the consenting stage.

Oakura school capacity and community infrastructure

120. Many of the local submitters have raised concerns regarding the likely increased demand on Oakura Primary School, which in turn would create capacity issues within the school, and will also give rise to traffic congestion and related safety issues in and around the school during drop-off and pickup times.
121. A prehearing meeting was held on 28 January 2019 with the applicant, the Ministry of Education, the School Board of Trustees and the Oakura Play Centre. Contrary to the concerns raised by the trustees, the Ministry of Education considers that the school has sufficient capacity to accommodate growth associated with the development, including the

capacity to extend classroom numbers if necessary. The Ministry considers the school has the potential to accommodate over 1000 students, and notes that there are only two other schools in Taranaki similar in size to Oakura Primary School, both of which are secondary schools.³³

122. In respect of traffic safety and efficiency concerns, the applicant's traffic expert confirms there is significant capacity remaining in the State Highway 45 and Donnelly Street intersection, and this capacity would remain even if volumes increased sevenfold. Equally, there is ample parking around the school and surrounding roads to cater for drop-off and pickup traffic, and while there are some delays as vehicles exit Donnelly Street, these are short lived. Even with a roll increase, these delays will not be extensive.³⁴ Overall these network effects can be appropriately mitigated through localised improvements.

Ecological impacts

123. As the section 42A report notes:

The proposal has the potential to maintain and enhance the ecological values of the site and wider area. The proposal incorporates elements which seek to protect and retain existing indigenous vegetation and fauna, such as the water bodies and gully areas. In addition, the proposed planting in the gullies has the potential to enhance ecological values. Mitigation measures are proposed to minimise effects on ecological values, such as pest control and silt control.

124. Submitter concerns focused on matters such as potential light pollution from street lighting, construction noise and dust, effects on wildlife, and the pollution of waterways.

³³ the current role is between 340 and 370 students

³⁴ see section 42A report paragraph 13.120

125. These matters have been comprehensively addressed by the applicant's ecological expert, who has assessed the potentially ecological effects and recommended a series of mitigation measures, including;

- a) stormwater attenuation;
- b) enabling fish migration;
- c) construction controls including silt control structures and revegetation measures;
- d) boundary fencing and domesticated pet controls.

126. Overall, the section 42A authors conclude that the measures proposed by the applicant to manage ecological effects would effectively achieve Objective 16 in the Operative District Plan to sustainably manage, and enhance where practical, indigenous vegetation and habitats.³⁵

Historic heritage

127. The applicant has completed a comprehensive archaeological survey and assessment of the site. There are no archaeological sites currently recorded at the property on either Archsite, the Operative District Plan, or the Heritage New Zealand Pouhere Taonga (HNZPT) list.

128. For the past 100 years the site has been predominantly used for agricultural purposes, including a small dairy factory which has left no remnants. The applicant's archaeological expert confirms that there are no unambiguous historic records pertaining to unrecorded kainga, pa, or Maori cultivations within the site, nor are there any redouts or block houses constructed on the property during the 19th Century British and Colonial military occupation.

³⁵ section 42A report paragraph 13.129

129. However, the applicant's expert considers there are reasonable grounds to expect archaeological evidence may be encountered when earthworks are undertaken on the site and recommends that an archaeological authority be obtained from the HNZPT ahead of earthworks being undertaken on site.
130. The applicant has undertaken consultation with both Ngati Tairi Hapu and Taranaki Iwi, with a prehearing meeting held with Iwi and Hapu on 29 January 2019. The parties have agreed to engage an archaeologist to oversee earthworks on the site who would ensure suitable discovery protocols are in place. With these mitigation measures in place, Council's section 42A report concludes that historic heritage matters have been properly addressed.³⁶

Social impacts

131. The plan change represents a change for Oakura. Once fully developed, the total plan change area will contribute to an approximately 20% increase in the total population at Oakura. Naturally this will give rise to a range of social impacts.
132. For many, this change will be very welcome. It will create an opportunity for new residents to enjoy the obvious lifestyle benefits of living at Oakura. It will provide a range of housing choices, and will introduce additional activity and vibrancy to the local community. Local organisations such as the surf lifesaving club and volunteer groups will have increased patronage and support. Local businesses will experience an increase in trading.
133. For some local residents, who want to see Oakura remain as it is, or that it's growth be slowly and steadily managed, the plan change will be seen

³⁶ section 42 a report paragraph 13.135

as coming at a cost to them. Some submitters identified concerns around the loss of the village character of Oakura, and the negative impact on recreational values, such as increased parking congestion at Oakura Beach.

134. These are all legitimate concerns which have been heard by the applicant. The plan change is intended to sensitively address these issues, by carefully managing the rate of growth, and ensuring that through a comprehensive and long-term structure planning process, all stakeholders can understand what the long-term future holds.
135. Overall, the applicant is confident that the changes that will be introduced to Oakura will produce social benefits for both the existing and future communities of Oakura to enjoy.

The legal framework

136. The legal framework which anchors the evaluation of this plan change is set out in the RMA. These matters have been addressed at section 7 of the s42A report and are not repeated. Adopting the approach established by the Environment Court in *Long Bay Okura Great Parks Society Inc v North Shore City Council* (A078/2008) and as amended in *High Country Rosehip Orchards Ltd v Mackenzie DC* [2011] NZEnvC 387, the evaluation report records at Appendix 8 the relevant mandatory requirements for the evaluation of a district plan change.
137. The critical part of the evaluation framework is set out at section 32 of the RMA which provides;

32. Requirements for preparing and publishing evaluation reports

- (1) An evaluation report required under this Act must—
- (a) examine the extent to which the objectives of the proposal being evaluated are the most appropriate way to achieve the purpose of this Act; and
 - (b) examine whether the provisions in the proposal are the most appropriate way to achieve the objectives by—
 - (i) identifying other reasonably practicable options for achieving the objectives; and
 - (ii) assessing the efficiency and effectiveness of the provisions in achieving the objectives; and

- (iii) summarising the reasons for deciding on the provisions; and
 - (c) contain a level of detail that corresponds to the scale and significance of the environmental, economic, social, and cultural effects that are anticipated from the implementation of the proposal.
- (2) An assessment under subsection (1)(b)(ii) must—
- (a) identify and assess the benefits and costs of the environmental, economic, social, and cultural effects that are anticipated from the implementation of the provisions, including the opportunities for—
 - (i) economic growth that are anticipated to be provided or reduced; and
 - (ii) employment that are anticipated to be provided or reduced; and
 - (b) if practicable, quantify the benefits and costs referred to in paragraph (a); and
 - (c) assess the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the provisions.

138. In addition to these mandatory statutory requirements under the RMA, the applicant has also lodged with Council an application to vary consent notice 9696907.4 which relates to Lot 29 DP 497629, which is the 62 ha lot making up the majority of the plan change site.

139. A number of submitters have raised concerns regarding the proposed amendment to this consent notice, and claim that it must remain in place unchanged. Because the consent notice constrains subdivision of this lot while it remains in the Rural Environment Area Zone, the submitters suggest that its consideration must be prioritized, and that it should count as a significant factor weighing against the plan change, rather than requiring that it be addressed as a consequential amendment should the plan change be approved. This suggested approach is legally flawed, it has no basis in RMA terms, and must not be followed. To follow this approach will lead the commissioners into an error of law.

140. By way of background, the consent notice relates to what is the “balance lot” of the Paddocks subdivision (Lot 29). The Paddocks subdivision consent was subject to a number of conditions, a number of which were required to be complied with on an ongoing basis. Most of those conditions related to lots within the subdivision itself, however one consent condition related

to Lot 29, which was the balance farm lot. A consent notice issued on 26 May 2014 pursuant to section 221 of the RMA which recorded as item 6;

Lot 29 shall not be further subdivided while the land remains in the Rural Environment Area.

141. This was an appropriate consent condition to impose in order to preserve both the rural character of this land, and to protect the land resource from further fragmentation, given that it had been the subject of a 30 lot subdivision.
142. Critically however, the consent condition contains an important qualification, which is that the restriction on subdivision only applies while the land remains in the rural zone. Accordingly, if the zoning changes, the restriction falls away. It is not absolute. Rather, it expressly considers and addresses the potential for change. Parties relying on the consent notice, such as residents of the Paddocks, would understand this limitation. Its existence cannot, and should not usurp the primacy of section 32 in the evaluation of this plan change.
143. Accordingly, the existence of the consent notice is not a relevant factor in the evaluation of the plan change. However, the impact of further subdivision of Lot 29 on the amenity of the residents within the Paddocks subdivision, and surrounding residents is relevant, and is properly accounted for in the section 32 evaluation.
144. On this basis, the correct approach for the commissioners is to address the primary task of evaluating the plan change in accordance with orthodox RMA principles, including the mandatory evaluation factors set out in section 32.
145. If at the conclusion of that evaluation, the commissioners are minded to approve the plan change, then this will result in a change to the zoning of

Lot 29. It will become, for the most part, residential and rural lifestyle zoning, with a small remnant of rural zone.

146. With this change in zoning established, the commissioners must then address the question of whether the consent notice should be varied in accordance with section 221(3)(a) of the RMA which provides:

At any time after the deposit of the survey plan,-

- (a) the owner may apply to a territorial authority to vary or cancel any condition specified in a consent notice.

147. Pursuant to section 221 (3A) of the RMA, sections 88 to 121 and 127(4) to 130 of the RMA apply, with all necessary modifications, in relation to an application made under subsection (3).

148. As the High Court held in *Green v Auckland Council* [2013] NZHC 2364, when considering an application for a variation of a consent notice under section 221(3) it is necessary to carry out an examination of the purpose of the consent notice and then undertake an enquiry into whether some change of circumstances has rendered the consent notice of no further value.³⁷

149. In the current context, if the plan change is approved, and Lot 29 is no longer within the Rural Environment Area Zone, this will be a highly relevant change in circumstance which is explicitly referenced in the consent notice, and will have rendered the consent notice of no further value. Indeed, the consent notice will at that stage only serve to frustrate the intended land use outcome delivered under the plan change. For that reason, the consent notice must be varied in order to give effect to the commissioners determination on the plan change.

Evidence for the applicant

³⁷ *Green v Auckland Council* [2013] NZHC 2364; para 129

150. The applicant will call nine witnesses. They are;

- a) Mike McKie (presented by Simon McKie) - representative of Oakura Farm Park Ltd;
- b) Cornelis Bevers – ecology;
- c) Ivan Bruce – archaeology;
- d) Alan Doy - structure plan, survey and yield;
- e) Andrew Fraser/Kim Jansen - three waters infrastructure and site feasibility;
- f) Andrew Skerritt - transportation effects;
- g) Shaun King - acoustic effects;
- h) Richard Bain - landscape and visual effects;
- i) Colin Comber – planning.

Dated 22 July 2019



Lachlan Muldowney
Counsel for the applicant