Before the New Plymouth District Council

Independent Hearings Commissioner

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of Subdivision Consent Application SUB22/48271 and LUC24/48416– proposed two Lot Rural Subdivision at 373 Maude Road

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LEGAL SUBMISSIONS ON BEHALF OF GARRY AND CATHERINE BROADMORE (APPLICANTS)

Dated: 13 May 2024

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OUTLINE OF LEGAL SUBMISSIONS

INTRODUCTION

1. Currently Computer Freehold Register 1002193 contains Lot 1 DP 521015 and Lot 2 DP 563612, an area of 6.9ha. The proposed subdivision would create new title proposed Lot 1 of an area 2.7ha for development of a dwelling for the Applicants' daughter, Rachel Broadmore. The balance (proposed Lot 3) will be 4.2ha in area and would contain the Applicants' dwelling and associated sheds. Land use consent is also required earthworks to establish an access driveway from Maude Road and to establish a building platform for the proposed Lot 1.

2. Ms Johnston provides evidence (s42A report) for the New Plymouth District Council (Council). The Applicants agree with Ms Johnston's analysis that the subdivision proposal was a discretionary activity under the Operative District Plan at the time the application was lodged and would be a non-complying activity under the Proposed District Plan, s88A applying.[1]

3. Mr and Mrs Murray oppose the subdivision consent application. Mr and Mrs Murray are the owners of 335 Maude Road which adjoins the site to the West. Mr and Mrs Murray own an approximately 2 ha rural lifestyle property with a business 'Blue Petal', run from a converted shed. It is from this shed, and from their orchard area that Mr Bain agrees that the proposal could add a more urban element to the view (not from the Murray's high amenity areas – being dwelling main living areas or outdoor courtyards).[2]

4. The substantial mitigations developed by the Applicants' planner Mr Brophy, and landscape architect Mr Bain, are well summarised at paragraphs 27 & 28 of Ms Johnston's s42A Report. These were carefully developed after consultation meetings with Mr and Mrs Murray, as described in Mr Brophy's evidence and include proposed no-build area, a limit of one dwelling on Lot 1, design controls and screen planting developed sensitively in order to retain a sense of openness yet retain rural character.

5. Mr Bain's Landscape Memo (July 2023) discusses potential effects of the new dwelling on the wider environment and on 335 Maude Road and concludes:[3]

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[1] S42A Report at [46]; Brophy evidence at [5.6].
[2] Bain evidence at [5.7].
[3] At [8].

"The impact of a new dwelling on proposed Lot 1 will create an addition to the area's built form but given the landscape pattern as described above, the effect on character will be very low due to its discrete setting which is well away from the road and is essentially 'tucked' in behind a ridge. A portion of the roof line is likely to be visible above the ridge but this will only affect the dwelling at 373 (applicant) and be visible as a transitory view from Maude Road fro [sic] the position shown in Figure 5. The site and broader area will not appear overly urban as the vegetated and undulating pastoral landscape will continue to be the dominant landscape character."

And:[4]

"Without mitigation, a future dwelling would likely be partially visible from parts of their property, in particular from the shed nearest the site and from outdoor paddock/orchard areas. Views are partially mitigated by intervening vegetation on the submitter's property. However, because the views that are available are overtly rural, the proposal would likely add an urban element into their view that could affect visual amenity. Given this, without mitigation the level of visual effect is rated as low-to moderate.

...

In my opinion these [mitigation] measures will maintain rural character by reducing the visual impact of the future dwelling on the submitter's property to an extent where effects will be ***very low****."*

6. The Bluemarble landscape addendum dated Feb 2024 also confirms that the visual effects of the driveway and earthworks are very low (at paragraphs [8] and [10]).

7. In summary, after the mitigation that is proposed, Mr Bain concludes that any effects on rural character and amenity would be "*Very Low*".

8. Ms Johnston recommends the subdivision be approved, with conditions. She notes that Mr Ravi has outlined that the access to Lot 1 is in an appropriate location. Although the crossing will not meet the required sight distances in the District Plans for a posted speed limit of 100 km/h, which is 160m, the proposed crossing can meet a site distance of operating speed in this location is 60 km/h, which requires a sight distance of 55 m.[5]

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[4] At [10] –[12].
[5] S42A Report at [82].

LEGAL FRAMEWORK

9. It is trite that there is no absolute right to a view (in this case a view to an open paddock).[6] The decision-maker may still have regard to the 'view', or outlook, as part of the overall amenity and rural character enjoyed by the Murrays. A thorough analysis is required.

10. *Permitted baseline*: you have a discretion whether to take into account the permitted baseline under section 104(2).[7]

11. Subject to the requirements of the general law[8] it is a permitted activity for the Applicant to plant along the boundary of their property and by so doing, to affect the view from the adjoining property. Mr Brophy does not rely on this permitted baseline in his analysis.[9]

12. To the extent that it is relevant, it is also a permitted activity to spray the subject land, provided spraying complies with ordinary regulatory requirements around spray drift (this is dealt with further below under the heading "*Reverse Sensitivity*").

PLANNING EVIDENCE

13. The planning documents are the basis for decision-making (except in limited situations). These give substance to Part 2 of the Act.[10]

14. The planners before you reach the same conclusion in relation to the planning documents. Both rely on the evidence of Mr Bain. I make brief legal submissions on the Operative District Plan (ODP) and Proposed District Plan (PDP), before turning to the matter of weighting between these documents.

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[6] *Anderson v East Coast Bays City Council* (1981) 8 NZTPA 35 (HC) – decided under the TCPA 1977 - Justice Speight stating *"Views, of course, will be taken into account. Such determinations as, for example in Attorney General v Mt Roskill Borough [1971] NZLR 1030, but in my opinion the Tribunal was not in error in holding that there is no absolute right in an owner to the preservation of a view – either at common law or in planning law."*

[7] S104(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.*"

[8] Notably the Property Law Act 2007 section 333: "*Court may order removal or trimming of trees or removal or alteration of structures*".

[9] Brophy evidence at [5.29].

[10] *King Salmon* and *RJ Davidson Family Trust v Malborough District Council* [2019] NZCA 57; Port Otago v Environmental Defence Society [2023] 25 ELRNZ 201; Royal Forest and Bird Protection Society of NZ Inc v NZ Transport Agency [2024] NZSC 26.

OPERATIVE DISTRICT PLAN

15. The ODP rules provide for cascading activity statuses to ensure development is balanced against the retention of rural character. This cascade is based upon (a) the size of the balance lot, and (b) the number of lots already subdivided since the notification date of the District Plan (Rule 78). This is how the ODP deals with 'cumulative effects', in the sense of more than one lot subdivided from a Parent Title. The ODP's objectives and policies set out the importance of considering the location, design and scale of any subdivision in such circumstances.[11] Discretionary status allows for a "*comprehensive assessment of the impact of applications on spaciousness and the other elements of RURAL CHARACTER*".[12]

16. Full discretionary status recognises that there are parts of the rural environment that are more suited to development than others. All factors are to be taken into account in determining whether discretionary activity subdivisions are appropriate. Such factors include whether a site involves undulating and dissected landforms e.g:[13]

> "*The subdivision and the resulting development should not be highly visible in the landscape. The varied nature of the rural landscape provides <u>some opportunity</u> to conceal the effects of small ALLOTMENTS, particularly in areas that have undulating and dissected landforms. <u>Carefully siting ALLOTMENTS</u>*

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[11] For example, under "Reasons" for discretionary activity subdivision in the zone: "*Particular consideration will be given to their density, scale, location and design while considering the key elements of RURAL CHARACTER*"

[12] Page 26(e). The elements of 'rural character' are set out on page 26a of the District Plan (and elaborated there):

- Spaciousness.
- Low Density.
- Vegetated.
- Production oriented.
- Working environment.
- Rural based infrastructure.
- Rural Infrastructure.

Under Issue 4 of the Operative District Plan: "*The elements associated with the rural environment are predominantly developed from established rural practices that have put the land to a productive use. Such uses include pastoral farming, horticulture, intensive livestock farming and other rural industries. These uses are being influenced by innovative rural practices. It is these uses that form the underlying basis for the levels of amenity expected in the rural environment, providing a basis for the elements of RURAL CHARACTER.*

[13] Reasons 4.2 page 26f Operative District Plan. The Reasons also state "The *discretionary and non-complying assessment process allows for a comprehensive assessment of the impact of applications on spaciousness and the other elements of RURAL CHARACTER. The identification of the right to apply for a certain number of ALLOTMENTS acknowledges that a larger number of ALLOTMENTS would likely be inappropriate in the rural area. This is not to say that the number of ALLOTMENTS identified will be appropriate in every circumstance, as this will depend on site specific factors and other matters that will be addressed through the discretionary assessment process. Any recommendations from design panels are able to be considered when assessing full discretionary and non-complying applications."*
(Emphasis)

and avoiding development on prominent landscape features such as ridgelines will ensure the maintenance of RURAL CHARACTER." (Emphasis)

17. In summary, it is acknowledged that a high level of assessment of effects on Rural Character is required. Following this thorough assessment, Mr Brophy and Ms Johnston reach the same conclusions.[14]

18. The planning evidence is that the subdivided land would provide for a reasonably sized lots for grazing. The application site includes no land which is classified Land Use Capability Class 1, 2, or 3 by the New Zealand Land Resource Inventory. Only one dwelling will be able to be established on the new Lot.[15]

PROPOSED DISTRICT PLAN

19. Mr Brophy's evidence discusses the Proposed District Plan, agreeing that Ms Johnston has identified the relevant Objectives and Policies.[16]

20. Both Mr Brophy and Ms Johnston recognise that the 41 ha 'balance title' is relevant but take slightly differing approaches to its relevance. Mr Brophy states this is relevant in forming part of the *existing environment*.[17] Ms Johnston takes what may be termed a 'mathematical' approach, noting that it is twice the 20 ha requirement in the PDP.[18] Both conclude that that the role, function and predominant character of the rural production zone will not be compromised, and landforms will not be disturbed by earthworks.[19]

21. Mr Brophy considers the proposal is consistent with the Subdivision Chapter of the PDP (referring in particular to Policies SUB-01, SUB-10 and SUB-12).

22. In relation to the Rural Production Zone Chapter, Mr Brophy notes the reference in the Chapter to "incompatible" activities. Objective RPROZ-03 is that the

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[14] S42A Report at [61]: "*Overall the subdivision will largely retain an open and therefore spacious production-orientated landscape that will be interspersed with buildings at sufficient separation distances to be considered low density. This is largely due to the 41 ha balance lot which will continue to be used for primary production purposes with an existing dwelling and curtilage to support the productive uses.*"; at [63]: "*I believe the proposal maintains prominent ridgelines, natural features and landforms, and proposes an increase in vegetation of varying types into the landscape to largely retain the rural character and amenity of the site and area.*"; Report at [108]: "*Lot 3, although a child title is of a size, shape and position that retains the production orientated activities on the predominant portion of the subject site along with the 40 ha remaining in the parent title.*"

[15] Proposed condition 21.

[16] Refer also [64] – [67] Brophy evidence.

[17] Brophy evidence at [5.34], [5.64].

[18] S42A Report at [115] – [116].

[19] S42A Report at [117].

"*role, function and predominant character of the Rural Production Zone is not compromised by incompatible activities*". Policy RPROZ-P3 states:

> *Avoid activities that are incompatible with role, function and predominant character of the Rural Production Zone and activities that will result in:*
>
> *1. reverse sensitivity effects and/or conflict with permitted activities in the zone; or*
>
> *2. adverse effects, which cannot be avoided, or appropriately remedied or mitigated, on:*
>
> *a. rural character and amenity values;*
>
> *b. the productive potential of highly productive soils and versatile rural land.*
>
> *Incompatible activities include:*
>
> *1. residential activities (except papakāinga) and rural lifestyle living that are not ancillary to rural activities.*
>
> *…".*

23. This is a relatively directive policy but it is submitted the reference to "*incompatible*" activity in RPR-OZP3 does not close-off *any* residential/rural activities in the Rural zone. Analysis is required whether residential activities are:

    23.1. ancillary to rural;[20]

    23.2. have reverse sensitivity effects;

    23.3. have effects on rural character and amenity values that cannot be avoided, appropriately remedied or mitigated;

    23.4. affect the productive potential of highly productive soils/versatile rural land;

    23.5. are incompatible with the predominant character of the Rural Production Zone.[21]

24. As recognised by Mr Brophy, there is a need to reconcile this Policy RPR-OZP3 with other policies in the PDP. For example Policy RPROZ-P1 would "*allow*" residential activities that are "*compatible with the role, function and predominant character of the Rural Production Zone*", while "*ensuring their design, scale and intensity is appropriate*". Mr Brophy concludes "*the proposed*

[20] Mr Brophy points out that the proposed lots are of sizes that are able to cater for grazing (a rural activity) indicating that the lots can be viewed as ancillary to rural activities: Lot 1 would include a no-build zone, is of a size that will provide for grazing, or for example orchard activities, due to its size.
[21] Objective RPROZ-03.

development of Lot 1 and a future dwelling is not incompatible and based on the evidence of Mr Bain, the proposed Lot design is able to appropriately mitigate potential adverse effects on rural character and amenity values".[22] In relation to the Rural Production Zone Objectives and Policies, Ms Johnston concludes *"... the proposal is consistent with this directive policy and overall, I consider the proposal is consistent with the character and use of the Rural Production Zone"*.[23]

25. It is submitted that after "*having regard to*" the Objectives and Policies of the ODP and the PDP (under s104), the application should be granted (even if if is found to be contrary to one PDP policy).[24]

WEIGHTING OF ODP AND PDP

26. The extent to which the provisions of a *proposed* plan are relevant should be considered on a case-by-case basis and might include:[25]
    - The extent (if any) to which the proposed measure might have been exposed to testing and independent decision making.
    - Circumstances of injustice.
    - The extent to which a new measure, or the absence of one might implement a coherent pattern of objectives and policies in a plan.

27. Weight to be given to the PDP is primarily influenced by how far it is through the First Schedule process (the first of these factors).[26] In this case, Council decisions have been made on the PDP but an appeal has been lodged by Bland

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[22] Brophy evidence at [5.81].
[23] S42A Report at [120].ue
[24] In *Todd v Queenstown Lakes District Council* [2020] NZEnvC 205 where Hassan J used the guiding principles in *Keystone Ridge Limited v Auckland City Council* AP24/01 at [16) and [36]; and *Mapara Valley Preservation Society Inc v Taupo District Council* A083/07 at [39] to weight the Queenstown District ODP and PDP, and found after effects assessment that the proposal, despite being contradictory to one policy – a new policy 24.2.1.1 that represented a policy shift and required "*an 80 ha minimum net site area be maintained*" in the relevant zone - was overall consistent with the policies of both the ODP and PDP there, and "*[o]n that basis we find that granting consent would not impact on the integrity of Ch 24 or the PDP as a whole. As such, it does not pose any precedent risk*". An appeal against this decision was dismissed in *Brial v Queenstown Lakes District Council* [2021] NZHC 3609 (HC), the High Court dismissing the argument that the one policy (24.2.1.1) could be characterised as a "bottom line" at [87]-[88]. The Final decision of the Environment Court is in [2023] NZEnvC 57. It is submitted that this decision would be decided the same way, following the East-West Link Decision (*RFBPS v New Zealand Transport Agency* [2024] NZSC 26). The East-West Link case involved a reclamation in a Significant Ecological Area where there would be permanent loss of feeding and roosting areas for shorebirds (including those of threatened and at risk species). The Supreme Court found that "wriggle room" was built into the policies, even though an "avoid" policy is directive (at [99]). The "have regard to" language in s104 should not be read down but "*[t]here is a fundamental difference between allowing consent authorities to routinely undermine important policy choices in the NZCPS (as rejected in RJ Davidson), and permitting true exceptions <u>that will not subvert them</u>*" (at [109] Emphasis). Mr Brophy's evidence is that the PDP policies will not be "subverted" here.
[25] This convenient summary is taken from *Burton v Auckland CC* [1994] NZRMA 544.
[26] The jurisprudence is that the closer the proposed plan comes to its final content, the more regard is had to it. See [9], *Queenstown Central Ltd v Queenstown Lakes DC* [2013] NZHC 815.

and Jackson Surveyors on the subdivision provisions, in particular appealing the apparent shift from what is considered a large 'balance' lot (from 4ha in the ODP to 20ha in the PDP). There are six s274 parties to this appeal including three New Plymouth based surveyor companies, Kainga Ora, Federated Farmers and the Mana Whenua Appellants. The nature of the appeal is wide ranging.[27] In summary, the subdivision provisions are some way through the process but are by no means final and are subject to Environment Court mediation and potentially Environment Court (or higher) Court decision-making. This indicates less weight should be placed on the PDP provisions.

28. There are some Environment Court cases where weight is given to proposed district plans in circumstances where they evidence a significant 'policy shift' and where treating the operative plan's regime as deserving of greater weight would compromise the fundamental intentions of the proposed plan.[28] In this case it is acknowledged the PDP illustrates a move toward a more activity-based framework. However:

    28.1. The ODP provisions can be read as a "*coherent measure*".

    28.2. The ODP regime for managing the effects of subdivision on rural character and amenity is not entirely permissive – it requires thorough analysis for a discretionary activity.

    28.3. Even if the PDP did illustrate a significant policy shift, the shift would not be frustrated, because the application before you involves:

        28.3.1. a 2 lot subdivision splitting a 6.9 ha title to the two;

        28.3.2. in circumstances where the Lot sizes created are not urban but still invite activities of a rural nature;

        28.3.3. Mr Bain's evidence is that the proposal would not alter the "*predominant character*" of the zone as Rural – "*predominant character*" is what is sought to be protected by the PDP provisions;[29]

        28.3.4. landscape effects on the submitter are described as "Very Low".

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[27] Brophy evidence at [5.12].
[28] These arguments were considered in *Brial v Queenstown Lakes District Council* [2021] NZHC 3609 (HC), above-cited.
[29] Bain evidence at [5.3], [5.6], [5.12]. "*Predominant character*" is a term used in the PDP Rural Production Zone Objectives and Policies.

REVERSE SENSITIVITY

29. It is acknowledged Mr and Mrs Murray have a commitment to sustainability, as set out in the Blue Petal business website,[30] and may be concerned about how spraying on the subject property may affect gardens, orchard and bees. A residence (subdivision) will not create more spray issues as compared to a working farm. A rural or rural-residential landowner has rights to undertake spraying subject to regulatory requirements such as rule 56 h) of the Regional Air Quality Plan for Taranaki (agrichemicals) and NZ Standards[31]. For a condition to be imposed requiring a 'no spray' zone would require an *Augier* offer (the applicants are not offering that as there is already a regulatory regime in place).

30. The term reverse *sensitivity* (sometimes described as a *secondary* adverse effect) describes the outcome of introducing a new activity to an area already affected by an existing and lawfully operating activity, so that the existing activity becomes vulnerable to complaint and objection from the incoming activity.[32] Mr and Mrs Murray state that their "*field regularly has rural noise and activity that extend outside of normal working hours*". Although Mr and Mrs Murray will no doubt speak to this matter, it is unclear how the addition of a residence 45 m distance away from the boundary would attract complaints No consents are held by the Murrays for their business. The activity is a small orchard and yoga/herbal business (Blue Petal and Connossieur Honey), not a quarry or a chicken farm. The activity needs to comply with New Plymouth District Plan noise standards and traffic generation rules for the Rural zone - which any person occupying the dwelling on Lot 1 will be fully informed of through basic due diligence, should Ms Broadmore wish to sell the property in the future.[33]

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[30] https://bluepetalnz.com.
[31] NZS 8409:2004 — Management of Agrichemicals.
[32] *Avatar Glenn v New Plymouth District Council* [2016] NZEnvC 78 at [79]. See also Mr Brophy states the definition from the Quality Planning Website at his [5.50].
[33] This is not a case, as has been seen in New Plymouth, of a rest-home establishing next to an orchard that required extensive spraying and a bird-scaring noise machine. Even in that case, reverse sensitivity was not a reason to decline the rest home: *Avatar Glen Ltd v New Plymouth District Council* [2016] NZEnvC 78; [2016] NZEnvC 126. In Blueskin Bay Forest Heights Ltd v Dunedin CC [2010] NZEnvC 177, allowing an appeal against refusal by the council of land use consents to develop lots created by a previously granted subdivision consent, the Court considered reverse sensitivity concerns raised by rural neighbours regarding gorse spraying, mulching and noise from stock and mechanical equipment. The Court adopted an approach of "robust realism" to these issues. Spray drift was an issue of legal liability, and those who came to the area to live had to accept some rural noise as a fact of life: see [34]–[35].

AMALGAMATION CONDITION ON TITLE

31. There is an amalgamation condition on Computer Freehold Register 1002193. By way of history, a subdivision consent was granted to Garry and Catherine Broadmore on 6 July 2017 (SUB17/46804) to create a rural/residential lifestyle lot to the North (291 Maude Road, RT 823041). The interested purchasers did not wish to acquire what is now Lot 2 DP 563612 and so a subdivision application was made to split off that part of (then) Lot 5 DP 521015 into two, and to amalgamate Lot 2 of new DP 563612 with the existing landholdings of Mr and Mrs Broadmore (so as not to trigger additional development rights/assessment - the Council noting at that time that *"[o]verall there would be no net increase in the overall number of developable lots"*[34]). The amalgamation condition under s 241(2) RMA was sought and imposed.[35]

32. The current subdivision consent, if granted, would supersede the amalgamation condition. Cancellation of the amalgamation condition would need to occur (under s241(4) of the RMA) as a corollary to granting the current application. To tidy this matter, and ensure it is not overlooked, the Applicants seek an additional condition of consent that a s241 Certificate be issued by New Plymouth District Council certifying that the New Plymouth District Council certifies cancels the amalgamation condition imposed on Computer Freehold Register 1002193 that Lot 2 DP 563612 and Lot 1 DP521015 be held in the same record of title.

33. This is not contained in the draft conditions before you, and has recently been 'flagged' with the s42A Report writer.

CONDITIONS

34. Mr Brophy recommends the following condition to ensure the final constructed earthworks batters for the driveway to proposed Lot 1 are wholly within the cadastral boundaries of Lot 1:[36]

    The LT survey plan shall be prepared to ensure that all earthworks batters to establish the driveway to the building platform on proposed Lot 1 are located wholly within Lot 1.

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[34] Paragraph [19] of Decision on application SUB21/47808.
[35] This provides that Lot 2 DP 563612 and Lot 1 DP 521015 must be held in the same certificate of title.
[36] Brophy evidence at [5.93].

35. Mr Bain's suggests a minor change to the proposed Screen Planting Condition No. 14 (underlined):[37]

> *Prior to 224 certification screen planting shall be installed in the areas labelled 'Planting Mitigation' on the Landscape Mitigation Plan. This planting should comprise of a minimum mix of seven indigenous plant species from within the Egmont Ecological District, with 80% capable of reaching a minimum height of four metres in six years at a maximum of 1m spacings.*

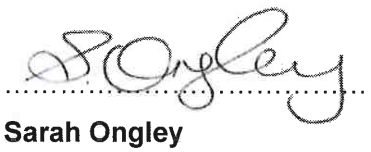
36. Witnesses:

36.1. Rachel Broadmore (Applicants representative).

36.2. Richard Bain (Landscape architect).

36.3. Jeremy Brophy (Planning).

DATED at New Plymouth this 13th day of May 2024



Sarah Ongley

Counsel for Mr and Mrs Broadmore

[37] Bain evidence at [5.14], Brophy evidence at [5.94].

Resource Management Act 1991

241 Amalgamation of allotments

Applies from 12 November 2018

1991 No 69

(1) Where a subdivision consent includes a condition under section 220(1)(b) which requires, in accordance with section 220(2)(a), that land be held in a particular [record of title],—

(a) the condition shall be endorsed on the survey plan; and

(b) the [Registrar-General of Land] shall not deposit the survey plan under the [Land Transfer Act 2017] or in the Deeds Register Office, as the case may be; and

(c) in respect of a subdivision of the Crown, the [Registrar-General of Land] shall not issue a [record of title] for any separate allotment on a survey plan approved by the Chief Surveyor for the purposes of section 228,—

until he or she is satisfied that the condition has been complied with as fully as may be possible in the office of [the Registrar-General].

(2) When a condition of the kind referred to in subsection (1)[, or a similar condition under the corresponding provision of any previous enactment,] has been complied with,—

(a) the separate parcels of land included in the [record of title] in accordance with the condition shall not be capable of being disposed of individually, or of again being held under separate [records of title], except with the approval of the territorial authority; and

(b) on the issue of the [record of title], the [Registrar-General of Land] shall enter on the [record of title] a memorandum that the land is subject to this section.

[(3) The territorial authority may at any time, whether before or after the survey plan has been deposited in the Land Registry Office or the Deeds Register Office, cancel, in whole or in part, any condition described in subsection (2).]

[(4) When a territorial authority cancels a condition in whole or in part, then—

(a) where the survey plan has not been approved by the Chief Surveyor, a memorandum of the cancellation shall be endorsed on the survey plan:

[[(b) where the survey plan has been approved by the Chief Surveyor or deposited, the territorial authority must forward to the [Registrar-General of Land] a certificate signed by the [chief executive] or other authorised officer of the territorial authority to the effect that the condition has been cancelled in whole or in part, and the [Registrar-General of Land] must note the records accordingly.]]]