

**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
Land Use Consent Application LUC24/48416 at 373
Maude Road, Korito.

STATEMENT OF EVIDENCE OF JEREMY JOSEPH BROPHY

PLANNING

Dated: 26 April 2024

PRESENTED FOR FILING BY:

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STATEMENT OF EVIDENCE OF JEREMY JOSEPH BROPHY

1. QUALIFICATIONS AND EXPERIENCE

- 1.1 My full name is Jeremy Joseph Brophy. I am a Director of Flint Planning Limited, a New Plymouth based resource management consulting firm. I have been in this position since December 2021. I have 18 years' experience as an environmental planner and project manager practicing in New Zealand.
- 1.2 I hold a Bachelor of Resource and Environmental Planning Degree (Hons) from Massey University, Palmerston North (2006). I have been a full member of the New Zealand Planning Institute (NZPI) since 2012 and am a Central North Island NZPI branch committee member for Taranaki. I am a certified Commissioner (panel certification) under the Ministry for the Environment's Making Good Decisions programme.
- 1.3 My experience includes planning practice in both local government and private consultancy, predominantly in the Wellington, Waikato and Taranaki Regions. I have more than 10 years of experience developing and preparing rural subdivision consent applications in the New Plymouth District and am familiar with resource management issues related to this type of activity. I have also previously contracted to New Plymouth District Council (NPDC) assisting with processing of rural and urban subdivision resource consent applications.
- 1.4 My specialist areas of practice include leading multi-disciplinary project teams, shaping and designing development proposals, facilitating stakeholder and affected party consultation, preparing and processing resource consent applications and developing resource consent conditions.
- 1.5 I was engaged by Garry and Catherine Broadmore ('The Broadmores') on 23 May 2023.
- 1.6 My involvement with this resource consent application includes the following:
 - 1.6.1 Consultation with Mr and Mrs Murray owner and occupier of 335 Maude Road (which occurred between 30 May 2023 and 15

January 2024) in an effort to resolve the concerns raised in their submission in opposition. This consultation included a number of in person meetings and resulted in development of a landscape mitigation plan concept and a suite of design controls to be registered on the record of title for proposed Lot 1 via consent notice to inform future development of a dwelling.

1.6.2 I prepared the land use consent application for earthworks required to establish an access driveway from Maude Road, and earthworks to establish a dwelling building platform on proposed Lot 1.

1.6.3 I prepared an assessment of environmental effects (AEE) addendum document Rev B1 dated 2 April 2024 to close out a number of assessment gaps in the original AEE by Pat Sole Surveyors. Given that the application was lodged in 2022, the District Plan review had progressed whereby decisions had been issued on the Proposed District Plan. At this point, all rules and effects standards had legal effect and were required to be assessed. All relevant matters within the Proposed District Plan – Decisions Version (PDP-DV) have been assessed in the Rev B1 AEE addendum.

1.7 I have visited the application site, the adjoining property at 335 Maude Road and surrounding area several times. I most recently visited the application site on Friday 19 April 2024.

2. CODE OF CONDUCT FOR EXPERT WITNESSES

2.1 I confirm that I have read the Environment Court's Code of Conduct for Expert Witnesses as contained in the Environment Court's Practice Note 2023. I have complied with the Code when preparing this written statement and will do so when I give oral evidence. The data, information, facts and assumptions I have considered in forming my opinions are set out in this statement to follow. The reasons for the opinions expressed are also set out in the statement to follow. Unless I state otherwise, this evidence is within my sphere of expertise, and I have not omitted to consider material facts known to me that might alter or detract from the opinions that I express.

3. PURPOSE AND SCOPE OF EVIDENCE

- 3.1 I have been asked by the Broadmores to give expert planning evidence on this proposed resource consent application.
- 3.2 My evidence is structured to follow the subheadings in the s42a officers report. I am generally in agreement with the evaluation of the relevant planning framework and the submission received as set out in the s42a officers report.
- 3.3 Where relevant, I will reference the contents of the s42A report, which has been circulated and provides a good reference document.
- 3.4 My evidence covers:
 - 3.4.1 The application site and receiving environment.
 - 3.4.2 The proposal.
 - 3.4.3 Consultation and notification.
 - 3.4.4 Submissions.
 - 3.4.5 Pre hearing.
 - 3.4.6 Assessment of the effects of the subdivision and land use
 - 3.4.7 Statutory requirements.
 - 3.4.8 Other matters.
 - 3.4.9 Part 2 of the RMA.
 - 3.4.10 Comments s42a report draft consent conditions.
 - 3.4.11 Conclusion.

4. DOCUMENTS AND MATERIALS REFERENCED

- 4.1 In producing this statement of evidence, I have reviewed the following evidence and materials:
 - 4.1.1 The subdivision resource consent application prepared by Pat Sole Surveyors, lodged 22 December 2022.
 - 4.1.2 Submission in opposition from Mr and Mrs Murray, owner and occupier of 335 Maude Road, dated 7 February 2024.

4.1.3 Topographical plan prepared by Mr Pike of Delaco, Project Number 23043.

4.1.4 Proposed earthworks plans prepared by Mr Sole, Sheet 1 (Rev B) dated 4 April 2024.

4.1.5 Geotechnical report prepared by Mr Icaro of OneElevenSix Engineers, Rev B dated 31 January 2024.

4.1.6 The s42a report prepared by Ms Johnson dated 16 April 2024.

4.2 I have also relied on:

4.2.1 The landscape and visual effects evidence of Mr Bain dated 26 April 2024.

5. EVIDENCE

The application site and wider receiving environment

5.1 Paragraphs 6 to 14 in the s42a report provides a good summary of the application site and receiving environment. I agree with this description of the application site and wider receiving environment.

The Proposal

5.2 The proposal is to undertake a two Lot subdivision of the property at 373 Maude Road, Korito (Legally described as Lot 1 DP 521015). The subdivision will create proposed Lot 1, which will be a vacant Lot of 2.7Ha for future development of one dwelling for the applicant's daughter, Rachel Broadmore. Proposed Lot 3 will be 4.2Ha in area and will contain the existing dwelling and associated sheds which is the residence of Garry and Catherine Broadmore (the applicant).

5.3 The proposal includes earthworks to establish an access driveway from Maude Road and to establish a building platform for proposed Lot 1. Landscape assessment by Bluemarble proposes a planting plan with a suite of design controls for the future dwelling to be established onsite. The primary

purpose of the proposed landscape planting plan and design controls is to avoid and mitigate potential adverse visual effects on the owner and occupier of 335 Maude Road. The landscape planting plan and design controls are proposed as part of this application and are identified in the Bluemarble landscape addendum dated February 2024 and in the Flint Planning, AEE addendum Rev B1 dated 2 April 2024.

- 5.4 The proposal is described in paragraphs 21 to 26 of the s42a report. I agree with this description.
- 5.5 I agree with the table in paragraph 39 of the s42a report that under the ODP the proposal is a discretionary activity under rule Rur78 because proposed Lot 1 will be the second Lot of 2.7Ha in area (less than 20Ha) from the parent title, with a balance remaining on the computer freehold register subject to subdivision being more than 4Ha (Proposed Lot 3 is 4.2Ha).
- 5.6 I also agree that the proposed subdivision would be a non-complying activity under the PDP-DV, although as a result of the notification decision being made in February 2023 the proposal shall continue to be assessed as a discretionary activity under s88A of the Resource Management Act (RMA).

Amendments to the Proposal

- 5.7 In paragraph 78 of the s42a report, the reporting officer makes comment that proposed earthworks to establish the driveway appear to be located across the boundary between proposed Lots 1 and 3.
- 5.8 I have reviewed the proposed earthworks plan and discussed this matter with project surveyor Pat Sole. We both agree that all earthworks batters for the driveway on proposed Lot 1, should be wholly located within the cadastral boundary of Lot 1. In my opinion this can be addressed at s223 LT survey stage with the benefit of knowing exactly where the driveway has been established. A condition of consent has been drafted to provide for this outcome in paragraph 5.93 of this evidence.

Point of Clarification

- 5.9 The AEE addendum Rev B1 dated 2 April 2024 (that I prepared), includes a full assessment of the Proposed District Plan – Appeals Version (PDP-AV).
- 5.10 As result of appeals on the subdivision and earthworks rules, I agree with the s42a report that resource consent is sought for approval under the Operative District Plan 2005 (ODP) and the Proposed District Plan – Decisions Version 2023 (PDP-DV).
- 5.11 The PDP-AV assessment contained in the AEE addendum, assesses all rules, effects standards, objectives and policies within the PDP-DV, because at this point no appeals that relate to rural subdivision or earthworks have been resolved through ongoing mediation.
- 5.12 An appeal has been lodged by Bland and Jackson Surveyors, 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 and includes requests to reduce the minimum Lot size to 4Ha under SUB-R4, or alternatively retain the 20Ha balance requirement with the SUB-R4 activity status being lowered to a discretionary activity rather than a non-complying activity. Any other consequential amendments to maps, issues, objectives, policies, rules, discretionary, assessment criteria and explanations is also requested.

Consultation and Notification

- 5.13 The subdivision resource consent application was lodged by Pat Sole Surveyors with NPDC on October 2022 on behalf of Garry and Catherine Broadmore.
- 5.14 The notification decision was issued by NPDC on 10 January 2023 which confirmed that Mr and Mrs Murray owners and occupiers of 335 Maude Road are an affected party to resource consent application SUB22/48271.
- 5.15 A submission in opposition was received from Mr and Mrs Murray on 7 February 2023.

The Submission in Opposition

- 5.16 The submission prepared by Mr and Mrs Murray was in response to the Pat Sole subdivision resource consent application, scheme plan drawing 2021/17 Rev 1 dated July 2022 (included in Figure 1 below). This original proposed scheme plan identifies a 'proposed building platform' on proposed Lot 1, which was located approximately 15m from the boundary shared with 335 Maude Road.
- 5.17 The submission raises the following concerns and observations, which I have summarised below. The submission requests that Council decline the consent application.
- 5.17.1 A building platform in the location on the Rev 1 scheme plan, *"is so close to our property that it distroys [sic] the rural character, views and privacy as outlined in the RMA"*.
- 5.17.2 When the property at 335 Maude Road was created the nearest neighbouring dwellings were over a kilometre north and south of the property.
- 5.17.3 The building platform in the location on the Rev 1 scheme plan may have historical milking shed related infrastructure under the soils.
- 5.17.4 The field adjoining the Rev 1 scheme plan is part of an active horticultural activity related to the 'Blue Petal' business. This field regularly has rural noise and activity that extend outside of normal working hours.
- 5.17.5 The submitter raises concern for use of insecticides and pesticides related to residential use on proposed Lot 1 as a concern for their organic herb farm and bee hives.
- 5.17.6 The submitter raises concern for the accuracy of the scheme plan drafted by Pat Sole Surveyors, in that the scheme plan is considered to distort the size of each proposed property.

- 5.17.7 Proposed Lot 1 has other potential house sites that would not have geotechnical issues, much nicer views of the mountain and the central plateau.
- 5.17.8 No mitigation has been proposed for the proposed building platform on the Rev 1 scheme plan.

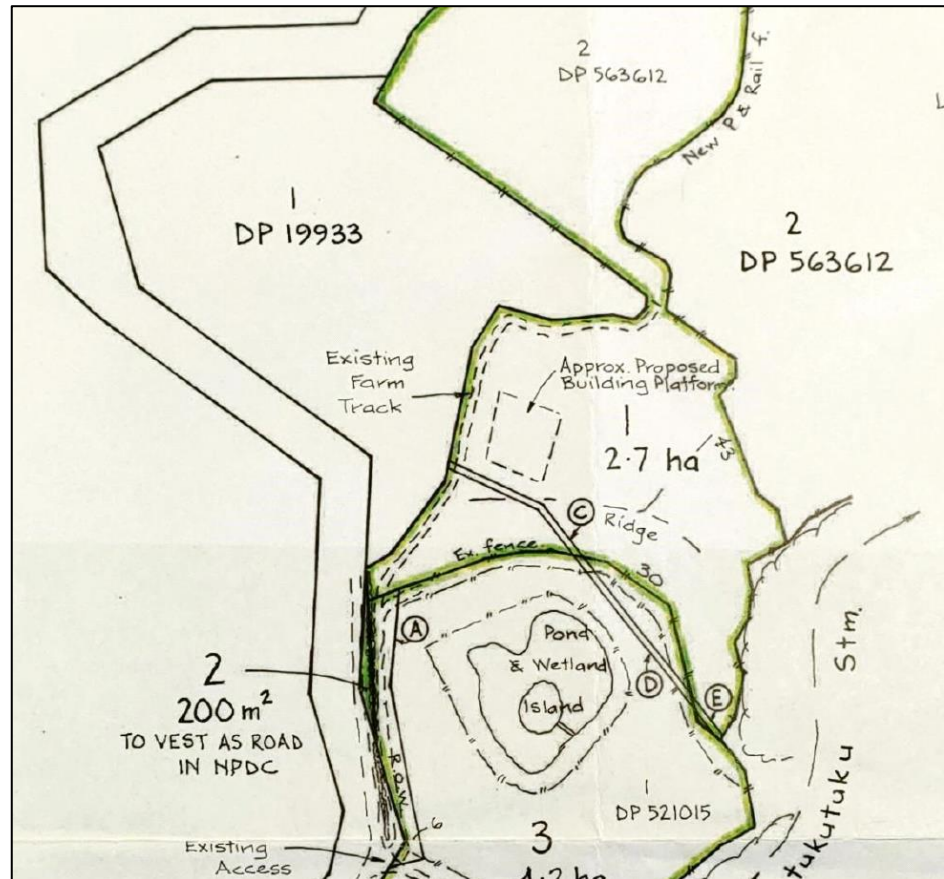


Figure 1: Excerpt from Rev 1 Scheme Plan Dated July 2022 showing building platform

- 5.18 I first met with Mr and Mrs Murray on 30 May 2023 to discuss the content of their submission and to work with them in an attempt to resolve points raised in their submission.
- 5.19 It was clear to me that a dwelling building platform which is further setback from the boundary with 335 Maude Road was an important objective. The revised dwelling building platform is identified in Figure 2, approximately 45m from the shared boundary. In addition, a landscape planting mitigation concept to visually screen a future dwelling on proposed Lot 1, and creation of a 'no build' area directly adjoining 335 Maude Road, were developed in response to the submission. Finally, a suite of design controls (including

maximum light reflective value (LVR) %, maximum building height, restrictions to one dwelling, and a number of other design controls) was also formulated to provide extra visual mitigation, over and above greater separation and landscape planting screening.

- 5.20 Design work included two in person meetings with Mr and Mrs Murray at their property at 335 Maude Road, phone calls and numerous emails. Considerable time was provided to allow feedback on suggested changes to the landscape planting plan and suggested design controls.

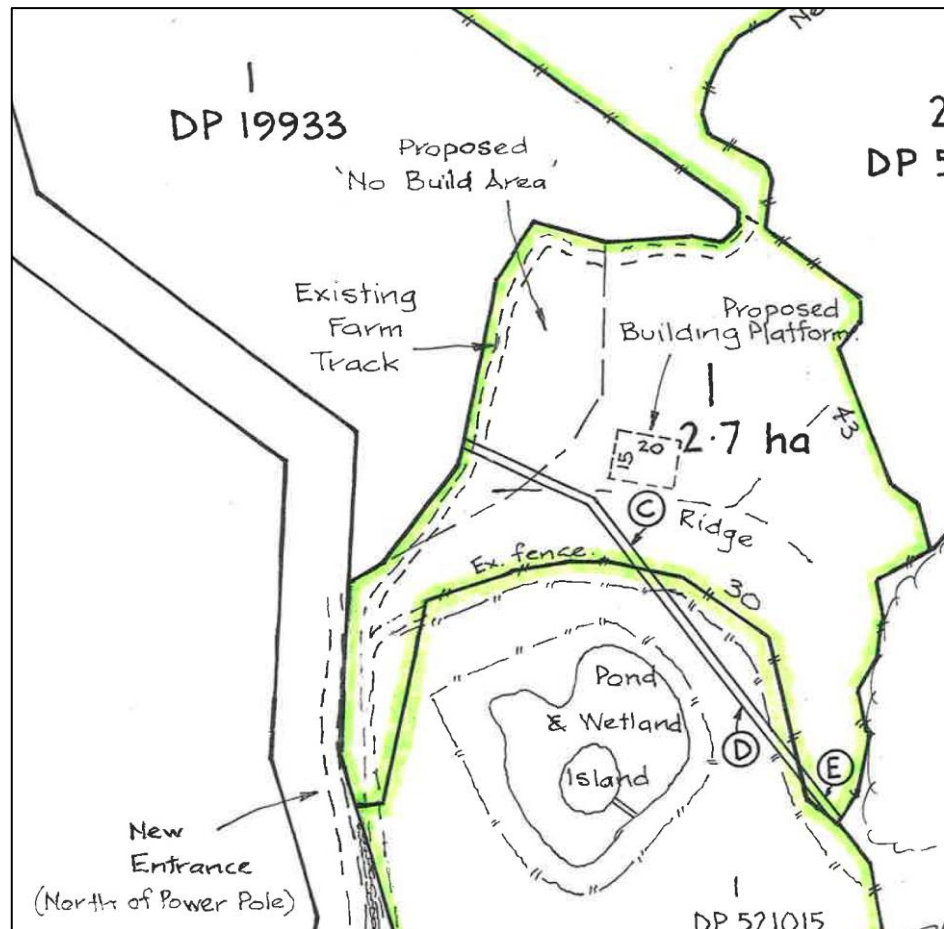


Figure 2: Excerpt from current Rev 2 Scheme Plan dated October 2023

- 5.21 The submitter had also raised concerns for potential spray drift over into their property from proposed Lot 1. In good faith the applicant worked to draft a private agreement that provided additional certainty for the submitter providing for a 48 hour notification of any spraying or fertiliser activities (which is the existing informal agreement between neighbours as noted in Rachel Broadmore's evidence). This private agreement unfortunately was not agreed by the submitter.

- 5.22 As a non-RMA matter, matters of spraying and fertiliser spreading would not typically form a condition of resource consent.
- 5.23 In my opinion, matters raised in the submission are now out of date with the changes that had since been made to the subdivision proposal as identified in the AEE addendum Rev B1 dated 2 April 2024. All submission points have been addressed within the current proposal which includes a considerable amount of site design and a detailed suite of mitigation measures. Matters of rural character, amenity values, privacy and geotechnical conditions have been resolved by the further information and assessment submitted to NPDC. These matters are assessed against the ODP and PDP below.

Pre-Hearing

- 5.24 I can confirm I did not attend the pre-hearing meeting held by the applicant and the submitter in opposition. This meeting pre-dates my engagement on this development proposal.

Assessment of effects of the proposed subdivision and land use

Permitted Baseline

- 5.25 Section 104(2) of the RMA allows for the consent authority to disregard an effect if a national environment standard or plan permits an activity with that effect. This is known as the 'permitted baseline' and the consent authority has discretion on whether to apply it or not.
- 5.26 Neither the ODP or PDP-DV allows for subdivision as a permitted activity. Therefore no permitted baseline applies to subdivision of land.
- 5.27 However, the applicant is able to plant trees and shrubs within their property in the paddock directly adjoining the boundary of 335 Maude Road in compliance with RPROZ-S3 of the PDP-AV (up to 9m high on the property boundary) for establishment of shelter belts. The visual effect of this hypothetical shelter belt planting has the potential to create a solid visual screen that would block existing views into paddocks on the applicant's property.

- 5.28 Whilst this scenario forms part of the permitted baseline, the applicant has carefully considered points raised in the submission in opposition and has developed a Lot layout, with building platform, landscape mitigation planting and future dwelling design controls that will continue to provide a good degree of openness when viewed from the shed on the property at 335 Maude Road. In addition, a no build area has been offered up as part of the proposal to ensure that potential adverse effects on amenity values of the owners and occupiers of 335 Maude Road are avoided and mitigated to an acceptable level.
- 5.29 With respect to this application, in my opinion the current development proposal is able to effectively avoid and mitigate any potential visual effects on the amenity values on the adjoining owner and occupier at 335 Maude Road resulting from a future dwelling being established on proposed Lot 1. As a result, the permitted baseline has not been applied with respect to mitigation planting. However, the discretion to apply the permitted baseline remains, under section 104(2) of the Act.
- 5.30 The PDP-AV also provides permitted standards for earthworks. The proposal exceeds the maximum cut and fill height exceeding 1.5m, and the total volume of earthworks (cut and fill) being 2,477m³. Given that the proposed earthworks exceeds the permitted effects standards by a considerable amount the permitted baseline is not a relevant frame of reference in disregarding potential effects related to this activity. In my opinion it is appropriate to assess the effects of the proposed earthworks within this application.

Rural Character and Amenity Values

- 5.31 The receiving environment surrounding the application site is consistent with the ODP and PDP-AV characterisation which anticipates low density built form, spaciousness, vegetated landscape predominantly used for rural activities.
- 5.32 This subdivision proposal will visually give rise to the establishment of one dwelling and associated driveway infrastructure on proposed Lot 1. However, the proposal also includes a comprehensive suite of landscape planting

mitigation and design controls for this future dwelling that must be assessed as part of this proposal.

- 5.33 When assessing potential adverse effects on rural character and visual amenity my focus is on the record of title that is subject to subdivision. In my opinion, the proposed subdivision provides a suitable level of landscape and design control mitigation (which is confirmed in the evidence of Mr Bain) that will avoid and mitigate potential character and amenity effects on the owners and occupiers of 335 Maude Road and on the rural character and visual amenity values of the wider rural receiving environment. Each proposed Lot will continue to have productive pastoral grazing use due to their size (2.7 Ha and 4.2 Ha).
- 5.34 It is important to note that the 41.72 Ha property located east of the Mangakotukutuku Stream which is also owned by Broadmore Farms Limited, comprises of the original parent title (existing on 5 March 1999) from which the application site was created. However, this adjoining record of title is not subject to subdivision and in my opinion can only be considered as part of the existing environment in this area. This block of farm land is large in nature and does not have any dwellings on it. This adjoining property does contribute to a spacious, low density rural environment.
- 5.35 I have relied on the evidence of Mr Bain with regard to potential adverse visual effects on the owners and occupiers of 335 Maude Road and the wider environment. Mr Bain's evidence confirms his opinion that the potential visual effects on the owners and occupiers of 335 Maude Road will be *very low*. This translates to a *less than minor* effect when considering effects under the RMA.
- 5.36 I agree with paragraph 70 of the s42a report, that there are no views from the dwelling at 335 Maude Road to proposed Lot 1. All views are visually screened by dense vegetation on this adjoining site. Consultation meetings I completed with Mr and Mrs Murray were held on their property and within their house. There are limited views from the shed and herb field / orchard area. As a result of the suite of mitigation offered up by the applicant, I consider that potential adverse effects on rural character and visual effects related to construction of a dwelling and associated driveway infrastructure on proposed Lot 1 are acceptable.

Rural Role and Function

- 5.37 The proposed future dwelling and access infrastructure for proposed Lot 1 will remove a relatively small area of the application site from being productive land use. The application site is not identified as being highly productive land according to the Manaaki Whenua / Landcare Research GIS database. Development of proposed Lot 1 will utilise part of the existing metal farm track that connects to the vehicle access point to the existing dwelling onsite, before the alignment of the driveway sweeps up through existing pastoral grazing land. It is estimated that approximately 1,000 m² of the 69,154 m² application site would be lost to driveway and building platform areas. This equates to a relatively small 1.4% reduction in production land on the application site. Potential adverse effects on the role and function of proposed Lots 1 and 2 will continue to be consistent with the ODP and PDP-DV outcomes for the rural environment and are acceptable.

Other Infrastructure and Servicing

- 5.38 I agree with the s42a report conclusions with respect management of stormwater, the existing power and water easements. The proposal includes conditions of consent that will avoid and mitigate sediment run off. The driveway earthworks will be undertaken directly adjoining the existing man-made pond. As described in paragraph 5.6 of this evidence the applicant proposes to adjust the proposed Lot 1 and 3 shared boundary to ensure that the earthworks batter related to the driveway for proposed Lot 1 is located wholly within proposed Lot 1.
- 5.39 I agree with the s42a report comment that the pond is not a 'natural waterbody' because it was man made. This man-made pond therefore provides additional protection (to allow sediment to settle out) for tributaries of the Mangakotukutuku Stream in the instance that the proposed geotextile fencing is compromised during a heavy rainfall event.

Traffic and Transport related Effects

- 5.40 The existing lawfully established vehicle access point for proposed Lot 3, which services the existing dwelling will remain unchanged. The s42a report

confirms that this vehicle access point has been through an approval process and is fit for purpose. I agree with this view.

- 5.41 The s42a report confirms via comments and recommendations of Mr Ravi (NPDC development engineer) that the proposed vehicle access point for proposed Lot 1 is fit for purpose and will result in a safe and efficient connection to the Maude Road transportation network. This is because the operational speed of sections of Maude Road adjoining the application site will be considerably lower than 100km/hr due to the winding geometry of the road, which reduces the operational speed to 60mkm/hr. I agree with this view.
- 5.42 A hedge row of *griselina* is proposed to the south of the vehicle access point to proposed Lot 1 to avoid headlight sweep directly along Maude Road to the south. The establishment and ongoing maintenance of this hedge row will be required via consent notice on the record of title on proposed Lot 1.

Waterbodies

- 5.43 I agree with the s42a report that the Mangakotukutuku Stream (which is a Statutory Acknowledgement for Te Kotahitanga o Te Atiawa) is located wholly within the adjoining property legally described as Lot 2 DP 422055.
- 5.44 As a result of hill landform contour on proposed Lot 1, it is not possible for sediment related to the proposed earthworks to directly reach the main channel of the Mangakotukutuku Stream. Proposed Lot 1 has two natural springs (with very low flow observed on recent site visit), that are ephemeral tributaries of the Mangakotukutuku Stream that have mature riparian vegetation and meander to the north east. The proposal includes sediment and erosion control mechanisms such as geotextile fencing that will ensure that potential sediment runoff to these tributaries is avoided.
- 5.45 The applicant is comfortable with a consent notice being listed on proposed Lot 3 to require that existing stock fencing be maintained and that existing riparian planting be maintained adjoining the tributary within this proposed Lot.

5.46 A site visit was completed with Sera Gibson (Ngāti Tawhirikura) on 22 February 2024. Julie Healy (Ngāti te Whiti Hapū) also intended to complete the walkover but was unavailable and advised that Sera was delegated to provide feedback on behalf of Ngāti te Whiti Hapū. Ngāti Tawhirikura and Ngāti te Whiti Hapū are Tāngata Whenua for the purposes of assessing this resource consent application.

5.47 As included in AEE Addendum Rev B1, Sera Gibson provided an email that advises that:

“we are comfortable with the proposal based on the sediment and erosion controls (identified in the A3 erosion and sediment control plan) that will be put in place to prevent it entering waterbodies in the vicinity of the activity”.

5.48 I agree with the s42a reporting officer that potential adverse effects on waterbodies, and the cultural values associated with waterbodies will be avoided the mitigated to an acceptable level.

Reverse Sensitivity

5.49 The submitter in opposition has raised concerns that the creation of proposed Lot 1 will generate reverse sensitivity effects on their ‘Blue Petal’ herb farm, orchard and bee hives. They are primarily concerned with existing production orientated activities, including use of herbicide and pesticide (and potential for spray drift) and application of fertiliser for pastoral grazing.

5.50 Quality planning describes ‘Reverse Sensitivity’ as the following:

“Reverse sensitivity is when occupants of an activity complain about the effects of an existing lawfully established activity. This can have the effect of imposing economic burdens or operational limitations on the existing activity thereby reducing their viability”.

5.51 The subdivision proposal will create an entitlement that a dwelling can be established on proposed Lot 1, approximately 45m from the boundary of 335 Maude Road. A ‘no build’ area is proposed that will ensure productive land use continues within this no build area of the proposed Lot 1.

- 5.52 I agree with the s42a report in paragraph 73 that this proposed subdivision will not generate any additional reverse sensitivity effects on the Blue Petal business operation, over and above the existing pastoral grazing on the application site.

Cumulative Effects

- 5.53 The subdivision represents a low level of residential development in this rural environment. The proposal will not result in an adverse cumulative effect that results in unacceptable effects on any adjoining property owners or the wider receiving environment.

Earthworks – Temporary Construction Effects

- 5.54 Potential temporary earthworks construction effects and potential effects on cultural values that may result from the proposed driveway and building platform earthworks can be managed by a suite of consent conditions that will ensure that sediment and erosion control and dust suppression during construction are effectively managed.
- 5.55 I agree with the s42a report that there are no sites of significance to Māori or archaeological sites recorded or identified in the PDP-DV. Tāngata Whenua have also confirmed that there are no specific cultural sites of significance on or directly adjoining the applications site.
- 5.56 Temporary construction noise will comply with effects standard NOISE-S2(1) which requires that noise from construction activity must be in accordance with NZS 6803:1999 Acoustics Construction Noise.

Statutory Requirements

Assessment of ODP Objectives and Policies

- 5.57 I agree with the relevant ODP objectives and policies listed and assessed in the s42a report with respect to subdivision of rural environment area land. For clarity, in my opinion Policy 4.1 is not of relevance to this proposal as it only applies to controlled activity status subdivision proposals.

5.58 Policy 4.2 seeks that rural subdivision is designed in a way that maintains the characteristics of the rural environment, whilst not being highly visible in the landscape. Direction is also provided within the policy that excavation and filling is minimised and retains the contour of the land. Mr Bain's evidence in Paragraph 5.6 confirms that:

"The dwelling on Lot 1 is positioned within a discrete setting – 'tucked' behind a distinctive ridge. This position ensures that the site's defining landforms remain intact and legible. The proposed vegetation will also further absorb a future dwelling into the landscape setting".

5.59 The Bluemarble landscape addendum dated Feb 2024 also confirms that the visual effects of the driveway are appropriate in paragraph 10:

"Landscape character and amenity effects resulting from the driveway are also very low given the nature of the earthworks (a driveway which is ubiquitous in the rural environment) and its position along an existing farm track".

5.60 The visual effects on rural character and amenity values are summarised in the evidence of Mr Bain as being "Very Low", considering the proposed subdivision site design and the suite of mitigation measures offered up by the applicant.

5.61 The proposal will retain two Lots of a size that will continue to provide for productive land use at 2.7 Ha and 4.2 Ha. Policy 4.2(a) seeks that the rural environment is spacious, maintains a low density and the subdivision provides a large balance. Rule Rur78 of the ODP considers that subdivision of "up to four lots each Less than 20 Ha in area from the parent title provided there is a balance area remaining from the computer freehold register subject to the subdivision that exceeds 4Ha".

5.62 In my opinion, a large Lot as defined by the ODP can range from 4 Ha to more than 20 Ha. Although, as a result of the ODP activity status moving from restricted discretionary for three Lots with a 20 Ha balance to discretionary for four Lots with a 4 Ha balance being taken from the parent title, the ODP inherently places limits on density within the rural environment through activity status.

- 5.63 The proposal is therefore consistent with Policy 4.2, because proposed Lot 2 will retain the larger balance of 4.2Ha. In addition, due to the proposed dwelling building for Lot 1 being largely hidden when viewed from Maude Road a spacious, low density rural environment will be maintained from that aspect.
- 5.64 It is acknowledged that the parent title of the application site legally described as Lot 2 DP 422055 remains large (41.66 Ha) with no dwellings on the property. This forms part of the existing environment in this location and indicates a low level of subdivision and residential lifestyle development since 1999. This development pattern assists in understand historical levels of fragmentation directly adjoining the site and indicates that the wider receiving environment continues to be spacious and of a low building density.
- 5.65 Proposed Lot 1 will be entirely consistent with Policy 4.5(d) in that the proposed design utilises landscape planting to screen views, there are consent notice controls on the future dwelling in terms of proposed height, materials and cladding and maximum roof reflectivity %. A low level of infrastructure will be required to service the future dwelling on proposed Lot 1. The proposal is therefore consistent with Policy 4.5.
- 5.66 The proposal is consistent with Policy 4.8, a low increase in traffic generation will result from this proposal that can be readily accommodated on Maude Road.
- 5.67 The proposal is consistent Cultural (Objective 19 and Policy 19.1) and Road Transportation (Objective 20, Policy 20.1 and 20.7) objectives and policies of the ODP.
- 5.68 I agree with the s42a report that this subdivision proposal is consistent with the objectives and policies of ODP (subject to suggested conditions of consent).

Assessment of PDP-DV Objectives and Policies

- 5.69 I agree with the relevant PDP-DV objectives and policies listed and assessed in the s42a report with respect to subdivision of Rural Production zoned land.

- 5.70 The PDP-DV proposes a more restrictive planning framework than the ODP, in that one Lot can be taken from a record of title being subdivided that is dated 5 March 1999 or earlier (the parent title), provided that there is a balance remaining on the record of title for the land being subdivided of at least 20 Ha (underline my emphasis). This can occur as a controlled activity.
- 5.71 If the controlled activity standard cannot be met, then subdivision defaults to a discretionary activity under rule SUB-R4 allowing up to three additional records of title to be created if there is a balance remaining from the record of title (earlier than 5 March 1999) for land being subdivided of more than 20 Ha.
- 5.72 In summary, if a rural property is not dated 5 March 1999 or earlier and does not have more than 20 Ha, it will be a non-complying activity to subdivide this land.
- 5.73 The Bland and Jackson appeal seeks that the 20 Ha balance be reduced to 4 Ha and seeks consequential relief to the PDP-DV issues, objectives and policies. In this respect the appeal is wide-ranging and challenges the need to retain larger lots sizes (20 ha) to provide for rural productive purposes and to maintain rural character.
- 5.74 As this appeal is yet to be heard by the Environment Court (it has not been settled in mediations), full weighting cannot be placed on the PDP-DV. The matter of weighting will be further addressed in legal submissions. Under the PDP-DV, a non-complying activity status does still provide for exceptions to the 20ha balance rule to be assessed (provided an applicant passes through the 'gateway' in s104D – which is not applicable for this application due to s88A).
- 5.75 The s42A report states at paragraph 120 that *“the subdivision is designed to be of a low built form with areas of vegetation and is not compromising the role, function or character of the Rural Production Zone. In this regard 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”*. I largely agree with this assessment.

- 5.76 The PDP-DV in SUB-O1 seeks that subdivision results in the efficient use of land and achieves patterns of development that are compatible with the role, function or planned character of each zone. SUB-P10 gives effect to this objective, whereby the scale, design and intensity of subdivision in the Rural Production Zone shall be managed where multiple small allotments with a large balance area is proposed. In this instance the two proposed Lots are not small, which in my opinion is no less than 4,000 m² and are not large which is 20Ha or greater. The Lots being 2.7Ha and 4.2Ha, in my opinion is consistent with these subdivision chapter objectives and policies, due to the Lot design and mitigation proposed. The proposal does not represent an urban level of development which is to be avoided in SUB-P10(3).
- 5.77 SUB-P12 includes an 'ensure' policy whereby subdivision in the Rural Zone results in Lot sizes and Lot configurations that are appropriate for the development of land use intended in the zone. The subdivision rules in the PDP-DV currently indicate that Lot sizes of one smaller Lot and a large 20Ha balance Lot are intended in the Rural Production Zone under SUB-P12(1) and are compatible with the role, function and predominant character or planned character of the zone in SUB-P12(2). In my opinion in proposal is inconsistent with these policies as a 20Ha balance Lot on the land being subdivided is not provided.
- 5.78 However, the proposal is consistent with SUB-P12(3) and SUB-P12(4) as the proposal is able to maintain rural character and amenity and is consistent with the quality and type of development envisaged (with the suite of mitigations proposed), and that the proposal will avoid reverse sensitivity effects.
- 5.79 I note there is a directive policy in RPROZ-P3 that appears to state 'residential' activities that are not ancillary to rural activities are defined as 'incompatible' and should be avoided. However, RPROZ-P3 (1 and 2) has some allowance for situations were reverse sensitivity effects and potential adverse effects on rural character, amenity values and the productive potential of highly productive soils and versatile rural land are able to be avoided the mitigated within a subdivision proposal.
- 5.80 In this instance, use of proposed Lots 1 and 3 are of a size that will require ongoing stock grazing which is a rural production orientated activity. The

proposed subdivision is also able to satisfy clauses 1 and 2 with regard to potential reverse sensitivity and avoiding effects on rural character, amenity and highly productive soils as described in the effects section of this evidence. The proposal is therefore consistent with RPROZ-P3 and the proposal is not an activity that shall be *avoided* because clauses 1 and 2 of the policy will be satisfied by the proposed subdivision design.

- 5.81 Recent caselaw focuses on reconciling objectives and policies rather than an ‘overall’ assessment of them.¹ This distinction may be a fine one. In my opinion the policies RPROZ-P2, P3, P4, P5 and P7 can be reconciled by examining whether the residential activity proposed, is in fact “*incompatible*” with the “*role, function and predominant character of the Rural Production Zone*”.² In my opinion, and for the reasons set out above, the proposed 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.

Weighting of the ODP and PDP-DV

- 5.82 The proposal is consistent with ODP objectives and policies. A large balance as defined by the ODP will be retained (more than 4 Ha) and the subdivision design includes a specific suite of mitigations that will ensure that the resultant future dwelling will be mostly hidden from the wider receiving environment and visually screened by mitigation planting when viewed from 335 Maude Road. A spacious, low density, production orientated environment will be maintained.
- 5.83 While the proposal is finely balanced when assessing some of the directive policies for the PDP-DV Rural Production Zone (i.e. RPROZ-P3), and by virtue of the proposal not able to provide a 20 Ha balance and being inconsistent with SUB-P12(1) and SUB-P12(2), after reconciling the objectives and policies I do not consider the proposal is directly contrary to them. However, the PDP-DV subdivision rules are subject to appeal and we therefore do not have certainty on the outcome of this appeal. As a result,

¹ *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.

² And/or will result in “*reverse sensitivity effects and/or conflict with permitted activities in the zone*” or “*adverse effects which cannot be avoided, or appropriately remedied or mitigated, on ... rural character and amenity values ... the productive potential of highly productive soils and versatile rural land*”.

less weight should be placed on these objectives and policies at this point in time.

- 5.84 In my opinion most weight should be placed on the ODP objectives and policies when considering this application under s104 of the RMA. The proposal is consistent with the ODP objectives and policies of relevance.

National Policy Statements

- 5.85 I disagree with paragraph 126 of the s42a report that no National Policy Statements are of relevance to this proposal. The addendum AEE Rev B1, dated 2 April 2024 confirms that the National Policy Statement for Freshwater Management 2022 is of relevance to this subdivision proposal and shall be assessed. The OneElevenSix Engineering report confirms methods that will be used to manage temporary construction effects (including sediment and erosion control) that will ensure that the objectives of the NPS-FW are met. The proposal is consistent with the NPS-FW.
- 5.86 No other National Policy Statements are relevant to this proposal.

Regional Policy Statement for Taranaki 2010

- 5.87 I agree with the s42a report in that this proposal will not result in a loss of amenity values, the application is therefore consistent with the objectives and policies of the Regional Policy Statement.

Tai Whenua, Tai Tāngata, Tai Ao (Iwi Environmental Plan)

- 5.88 I agree with the s42a report that this proposed application is consistent with the objectives and policies of Tai Whenua, Tai Tāngata, Tai Ao. In addition, Tāngata Whenua have completed a site walkover and have provided feedback that they are comfortable with the proposal subject to sediment and erosion controls being in place to protect tributaries of the Mangakotukutuku Stream.

Other matters

Precedent

- 5.89 As a result of topographical landform, proposed earthworks and the proposed landscape planting and design controls, this proposal displays a number of unique characteristics that are unlikely to be comparable to another subdivision in the Rural Environment. I agree with the s42a report that granting of this application will not set a precedent that may affect plan integrity.

Section 106

- 5.90 I agree with the s42a report and rely on the OneElevenSix Geotechnical Engineering report that confirms that there are no identified natural hazards affect this application site. The proposal provides physical and legal access for two proposed Lots. As a result, there is no reason to decline the application under Section 106 of the RMA.

Part 2 of the RMA

- 5.91 I agree with the way in which the s42a report approaches assessment of Part 2 of the RMA. The Davidson Decision³ is of relevance when considering the Proposed District Plan – Decisions Version. However, in my opinion it is still appropriate to assess Part 2 of the RMA with respect to the ODP provisions.
- 5.92 I agree with the s42a report that the proposed application is consistent with Section 5-8 of the RMA.

Comments on the s42a report Draft Consent Conditions

- 5.93 The following condition of consent is recommended to ensure that the final constructed earthworks batters for the driveway to proposed Lot 1, are wholly within the cadastral boundaries of Lot 1:

Section 223 RMA Approval

³ *R J Davidson Family Trust v Marlborough District Council* [2018] 3 NZLR 283.

“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”.

- 5.94 I am in agreement with the evidence of Mr Bain, that condition 14 should be reworked as described in his evidence to reference the plant species to be planted.
- 5.95 I am in agreement with the wording of all other draft consent conditions proposed in the s42a report.

Conclusion

- 5.96 In my opinion the resource consent application (subdivision and land use) can be granted, as it will promote the sustainable management of natural and physical resources and is consistent with the purpose of the RMA.

Jeremy Joseph Brophy

26 April 2024