

## **Before the New Plymouth District Council Independent Hearings Commissioner 29 March 2019**

In the matter of the Resource Management Act 1991 (RMA) AND

In the matter of Andrew Gillham and Louise Bain (The Applicants) for Resource Consent at 828 Dover Road Okato being Lot 2 DP 413786 (The Site) to:

- i) Restricted Discretionary Activity Resource Consent to erect a farm shed within the 10 metre side yard required by Rural Environment Rule 18 of the Operative New Plymouth District Plan (ODP) AND
- ii) Discretionary Activity Resource Consent to erect 4 Habitable Buildings (cabins) giving a total of 5 habitable buildings on The Site exceeding the 2 habitable building permitted maximum required by Rural Environment Rule Rur12A of the DP and exceeding the 25 metre maximum separation required by Rural Environment Rule Rur12A of the OPD.

### **STATEMENT OF EVIDENCE BY MICHAEL RALPH BROAD – PLANNER**

#### **Introduction**

1. I was engaged by the Applicants to provide planning assistance in this matter.
2. My background is 50 years of planning work in both District/ Town Plan administration under the Town & Country Planning Act and RMA at both the New Plymouth City & New Plymouth District Councils. Prior to retirement in May 2017 I had a policy role as part of the District Plan Review Team.
3. My planning qualification is a NZ Certificate in Town Planning. I was until 2017 a member of the NZ Town Planning Institute.
4. I have had over 40 years of experience primarily in consent processing and plan enforcement roles. This has included a number of complex and controversial projects. Several matters progressed to the Planning Tribunal or Environment Court.
5. I have read and can confirm I will act in accordance with Environment Court Practice Note 2014. in this regard I confirm my evidence is confined to my areas of expertise. I acknowledge my role to assist the Commissioner with planning matters.
6. The Applicants will provide background on their association with the property, land use changes in the area and details of the proposal and its operation:
7. Landscape Architect, Richard Bain, principal of Bluemarble Landscape Architects will provide expert evidence regarding visual effects and the management of related potential impacts of the proposed activity on the Rural Environment in this locality.

#### **Application process to date**

8. The application process is described in section 9 of the Planners Report. Paragraph 9.3 addresses the provision of an ecological assessment over and above the assessment provided in the application. In my view this is not an accurate description of the process. To be clear:

- The processing planner has not requested the applicant provide additional ecological assessment pursuant to section 92(1) and 92(3).
  - The processing planner has not commissioned a report detailing ecological assessment pursuant to section 92(2).
9. As neither of these has occurred the applicant has neither provided said ecological assessment, nor has it declined to do so pursuant to section 92A.
  10. Notwithstanding this, given the assessment matters at hand I consider there is sufficient advice available to consider the application, and support this overall recommendation reached in the planners' report to approve the application subject to conditions.

#### **Planners report and recommendation**

11. In general, I am supportive of the planners report and recommendation to approve the application under consideration.
12. I differ with some aspects of the assessment of environmental effects which ultimately impacts on the recommended consent conditions that are included in the Planners Report.
13. Specifically, I depart from the planners report regarding the assessment of the existing environment which must include consideration of the future environment. There are implications of this being overlooked in the s.104 assessment, affecting the scope and nature of the recommended conditions of consent under s.108. The existing environment is addressed below.

#### **Existing & future environment**

14. The existing environment is described in section 4 of the Planners Report. I am generally in agreement with the description of the current environment provided in this section regarding the application site and the immediate environment and the surrounding environment (the receiving environment).
15. An important omission from the description of the existing environment is the Native Bush within which the additional habitable buildings are proposed to be located. The cleared Cabin sites and Tracks to these areas are in existence. It is in the realm of normal maintenance of clearings and tracks to trim vegetation and clear debris. The Bush was grazed when the Applicants took over the property in 2010. It has since been fenced. Pest control, remediation planting and weed management has been continuing within this Native Bush for several years. The applicants also make sure debris does not block the stream that runs through the Bush. As demonstrated in the applicants evidence, these remediation activities in this area are ongoing. This commitment to actively managing the vegetation on their property forms a part of the existing environment.
16. I note that while this bush has no status under the ODP. It is noted as a Likely Significant Natural Area (LSNA) by the NPDC. The Draft Reviewed District Plan (DRDP) shows the intent to give SNA status to this LSNA when the plan is proposed and therefore will have legal protection. I anticipate that in the future this area of vegetation will be subject to provisions of a district plan, including rules.

17. The Planners Report does not include a description of vegetation in the receiving environment. Vegetation is typical of the rural environment area in the District, that being a mix of exotic trees and pasture grasses, interspaced with remnant indigenous vegetation.
18. Similarly, I consider that descriptions in the Planners Report are deficient in that they do not describe the existing environment as it may be modified by unimplemented resource consents, or development that is permitted by the operative District Plan - the future environment.
19. I can confirm there are no unimplemented land use consents that may modify the application site. However, I am not in a position to confirm this for the broader receiving environment.
20. Importantly, the OPD permits:
  - A maximum of 50 vehicle equivalent movements (VEM) in any day, with a maximum average of 30 VEM across a week; and
  - The modification of indigenous vegetation;
  - A noise environment that provides for normal farming activities which accommodates the operation of machinery;
  - A principal dwelling and proportionally large secondary dwelling both of up to 3 storeys in height in close proximity with no stated restrictions on area or design.
  - The use of any permitted dwelling as visitor accommodation. This could be Book a Bach, B&B or similar. These would also fall within the definition of “Commercial Accommodation”.
  - Carparks with up to 8 cars without landscaping. Carparks with 8 or more carpark only need landscaping if visible from a public road. There is no carpark landscape requirement linked to adjoining properties except where adjoining Residential Environment Areas.

The existing environment description must note these attributes, and the consideration of environmental effects and the need for their management considered against that context.

### **Property and Local Area - existing environment**

21. The Site and local area is in the Rural Environment Area under the ODP. There are no current ODP designations or notations affecting The Site.
22. An updated site plan showing property boundaries, the Native Bush, paddocks, the farm shed site, the existing dwelling, the 4 Cabin sites, access paths, kiosk, gazebo, sauna or bath enclosure utility/ storage / biosecurity shed and the carpark is attached or will be presented at the hearing.
23. The Site area is 6.85ha.
24. The land is on the flanks of Mount Taranaki, approximately 1km drive from Egmont National Park and start of the Dover Road walking track and approximately 4km drive from Pukeiti Gardens.
25. The Site and local area are hilly, rising towards Mt Taranaki. The use of the wider area was until recent years predominantly large farms and alternative lifestyle activities. Until 2011 the OPD allowed much smaller sites. This resulted in unprecedented subdivision. A

Plan Change was put in place to control this but not before significant subdivision had taken place. As a result there are many small holdings in the area with many yet to be built on. The neighbourhood is evolving into a “Rural Lifestyle” area.

26. The Site is served by Dover Road which is a winding Local Road with average formation width. As well as serving properties Dover Road it is one of the road links to the National Park and Pukeiti Gardens.
27. A gravel track from the site entrance provides access within this mixed use farmlet and to a North facing, small family home set back into a bank. This being the sole “habitable building” on the property. The only other significant existing structure is a hay shed.
28. The Site is tidy, fenced into small grassed paddocks, contains a pond and is landscaped with both Native and Exotic species.
29. Over 40% of The Site is native bush. The Site’s bush contributes about 20% of the area of a large bush remnant on several adjoining properties. The property’s bush area has up to 40m contour variation. The cabin sites and paths are cleared. Three of the four approximately 20m diameter sites are excluded from the DRDP SNA.

### **The Rural Environment Area**

30. The Rural Environment under the ODP encompasses a wide range of activities both permitted and consented. These include small scale art and professional studios, service providers ranging from hairdressers to engineers workshop, retail plant nurseries, residential care, museums, cafes, quarries, large rural contractors depots and visitor accommodation. A local example is Patuha Lodge/ Hotel at 575 Upper Pitone Rd. The future Rural Environment is likely to continue to provide for similar activities.
31. The OPD makes it clear that the community should expect such land use and character changes in the Rural Environment Area. The OPD Rural Environment Area Management Strategy states – *“As for the other ENVIRONMENT AREAS change is constant in the rural environment. Beyond the annual cycle of the seasons, regional, national and international forces act on the rural economy, and land uses frequently change as a result. Different crops, different management regimes and different lifestyles bring change to the rural landscape and to the people who live there.”*

### **Description of the activity - The Four Cabins**

32. The design, construction and operation of the ‘cabins’ is described in the application and is not repeated here.
33. The planners report has correctly identified that these fall within the definition of “Habitable Buildings” under the OPD.
34. They also fit within the OPD definition for “Commercial Accommodation”. The only relevance of this definition is to set the number of car parking spaces required to be provided on site in accordance with Appendix 23, Part B of the OPD.
35. There are no objectives, policies or rules in the rural environment area that manage the activity of ‘commercial accommodation’.
36. The planners report correctly identifies the activity status for this aspect of the application as discretionary.

### **Description of the activity - Farm Shed**

37. This application includes a 182 sq.m. farm shed to be sited 8m from the side boundary. OPD Rule Rur18 requires a 10m boundary setback.
38. The shed is about 30 sq.m. larger than shown in the original application. The additional area is located on the northern side away from the neighbours. There is no change in height. In my opinion this additional area has no material effect on consent considerations. A cross section showing the relationship of the shed with original ground lines is attached.
39. The shed is designed to be substantially within an excavation carried out in 2011 following engineers advice regarding batter gradient. The OPD side yard requirement has since increased to 10m. The excavated Farm Shed siting results in the bulk of this building being below pre-excavation ground levels and much less than its permitted height of 10m above original ground levels. This is shown on the cross-section which is item ?? in the application documents folio.
40. The OPD classifies this as a Restricted Discretionary Activity. The Cabins are a full Discretionary Activity. This is primarily a farm shed but will also be a workshop that used for some aspects of Cabin fabrication and future maintenance. Given this relationship with the Cabins "Bundling" would not be inappropriate.

### **Description of the activity – Other buildings and structures**

41. Other new structures and buildings related to the activity include:
  - a. An interpretation and information Kiosk/ Noticeboard.
  - b. A possible Sauna or similar purpose structure such as a screened bath.
  - c. A Pavilion/Shelter, which is a gazebo like structure to provide weather and sun protection for guests in a shared place outside the bush.
  - d. A children's play area to provide creative and educational play opportunities which can bring children closer to nature.
  - e. A utility shed for possible e-bike storage, cleaning equipment, enclosed rubbish containment and biosecurity procedures.
42. All of these structures and buildings will be of a bulk and location that will meet permitted status within the OPD.

### **Submission points raised**

42. There was one submission from the southern neighbours K & N Foley received. The submitters property is elevated and looks over much of the Applicants Site.
41. Section 8 of the planners report summarises the submission points raised. These are not repeated here.
42. I consider the following submission points to be outside of the scope of this application:
  - Effect on the character of Egmont National Park. Egmont National Park is defined as an Outstanding Natural Landscape in the ODP. By definition the ONL ends as the legal boundary of the National Park. For this reason I consider this submission point to be outside of scope.

- Commercial Activity establishing in a Rural area. The OPD is an effects based plan, as opposed to activities. Whether this small scale activity is commercial is irrelevant in the context of this management framework. The references to “Commercial Accommodation” within the OPD apply only to the calculation of car parking.
- Views of carparks and amenities from 852 Dover Road. Carparks with fewer than 8 carparks are not required to be landscaped under the OPD. Further private views are not protected in the ODP, or anywhere in resource management legislation. While I acknowledge that a view is a component of a landscape, I also note that views over the application site are “borrowed” that will change over time, and this change should be anticipated. For this reason I consider this submission point to be outside of scope.
- New planting not in keeping with native species of the surrounding area. There are no provisions in the OPD that govern the species of plant introduced onto a site. Further the “Existing Environment” comprises of a wide variety of Native and Exotic species. I note that the regional pest management plan for Taranaki restricts some species of pest plant, none of which are proposed to be introduced as a part of this application.
- Ecological effects including the continued removal of seedlings and saplings; clearance of bush that is at odds with KNE and neighbouring QEII covenants; introduction of new pests/pathogens; and new plantings not being in keeping with native species of the surrounding area (ecological effects). I have noted above in my description of the existing environment the status of vegetation clearance on the application site, all conducted as a permitted activity pursuant to the ODP. I also note that both the KNE and QEII programmes are entirely voluntary, that the vegetation on the subject site is not a part of either a KNE or a QEII, and there is no regulatory requirement for a landowner to enter into one. Based on this, and the current provision of the ODP I consider these submission points out of scope.
- Privacy issues. These are neighbourly issues and not a part of this consent application. There may be some challenges in defining boundaries within the area of indigenous vegetation. As stated in the application cabin guests will be required to not deviate from the access trails and cabin sites.

I address the remaining points in my assessment of environmental effects below.

#### **Assessment of Environmental Effects.**

43. The original application, and section 10 of the planners report include an assessment of environmental effects. This assessment is to clarify points within my original assessment, and to address additional matters raised in the assessment in the planners report.
44. As noted previously in this evidence, I consider that parts of the assessment in the Planners Report have been undertaken without the full description of the existing environment I have outlined previously in evidence. As a result, I consider some of the recommended conditions to avoid, remedy or mitigate potential adverse effects are out of step with the scale of activity proposed in the context of the receiving environment, and are not aligned with the objective and policy framework set in the OPD.

### **Farm shed effects**

45. The shed is North facing with only ventilation openings or windows facing South towards the submitters. It is a normal farm building and I can identify no incongruous aspects affecting Rural Amenity. Any activity within the sheds will need to operate within the noise level controls of the OPD.
46. It is normal consent practice to mitigate the visual effect of buildings that encroach on side yards with planting. Given the previously detailed "existing environment" I consider that confining planting to Native species possibly specific to this zone of Egmont Ecological District is unreasonable in this context and as far as I am aware not usual practice.

### **Other buildings and structures effects**

47. These minor and accessory buildings will all comply with the OPD in terms of siting. Where they exceed 5 sq.m. in area and 2m in height they will be 10m or more from any side boundary. They will be sympathetically designed and made of materials that fit the eco focus of the activity. There are no OPD visual appearance requirements for farm buildings.

### **Subdivision effects**

48. I have considered the potential for additional habitable buildings to lead to non-compliant subdivision. Each cabin is very small. While they each have discreet locations within the Native Bush they are still within close proximity to each other. This grouping, their small size and the reliance on foot access from a distant carpark does not in my opinion suit long term occupancy or have the necessary minimum area available to accommodate future subdivision.

### **Character and amenity effects**

49. The Cabins are totally contained within Native Bush. The balance of the property will remain a farmlet and be visually coherent with the existing environment.
50. The Evidence of both landscape architects that section 11.7 of the Planners Report summarises, quotes the professional opinions of Ms Davies "*new elements will mostly have no effect on existing character*" and Richard Bain "*will have a negligible effect on rural character*".
51. Sections 27 to 29 of the Evidence of Richard Bain recommends specific conditions to mitigate the potential adverse visual effects. These cover siting, the use of appropriate building materials, avoidance of reflection, building attachments and lighting. It is suggested that it would be appropriate for these to be incorporated into the conditions of consent.
52. The Cabins if consented, will preclude an otherwise permitted second dwelling being erected within 25m of the existing dwelling. This will reduce the built environment visual impact below the permitted baseline.

53. The existing dwelling and Cabins have an approximate combined footprint of approximately 172 sq.m. which equates to much less than the area of many new primary dwellings.
54. While the OPD does not require it, the 6 car capacity carparking areas will be landscaped to align with the eco ambience of the activity.
55. The cabins will not be visible. The landscaped carpark and minor outbuildings should not detract from the outlook over what is becoming a rural "Lifestyle" area with its increasing number of permitted habitable buildings, outbuildings, driveways and associated landform modifications.
56. Guests arriving at night will need lights and small illuminated directional signs to guide them along the drive to the carpark and to safely mark the paths to the Cabins. This will be soft, low level lighting so as to preserve the natural ambience of the setting. OPD illumination (glare management) standards will be met.
57. In order to inform guests, a compliant sign will be erected at the site entrance. A compliant roadside Sandwich Board adjoining the property frontage may also be used. The applicants may in the future seek approval from the road controlling authority to erect the entrance sign on Road Reserve to improve visibility to guests.
58. Guests will be asked to moderate their noise to respect other guests and neighbours. No electronic devices with speakers will be provided within the Cabins and guests wanting to listen to music will be encouraged to use personal devices. All noise related to the Cabin guests should be well within the levels prescribed by the OPD.

#### **Traffic generation, parking and access effects**

50. Each Cabin has a double and two single beds and are primarily designed for a single occupancy but would not preclude occupancy by two independently travelling pairs of adults. I believe that most Cabin guests would arrive in a single car. Even at peak occupancy times traffic generation including the principal household will be less than the 50 VEM allowed by the OPD. Realistically there will also be times, particularly in winter when occupancy is low to vacant. The activity does not include any event venue activity such as hosting Weddings although they could be used by groups attending functions elsewhere. Given this traffic will not exceed OPD levels.
51. The planners report contends that the proposal will double the number of vehicles using Dover Road based on dated 2004 daily traffic count data. The focus on this old data fails to apply the permitted baseline in the broader receiving environment where many largely not developed lifestyle sized allotments have been created can generate the same level of traffic (50 VEM max/ 30 VEM max average). I agree with the conclusion reached in the planners' report regarding potential traffic effects, but note that the impact will be even less than reported.
52. The Planners Report 11.50 includes an appraisal of the existing vehicular entrance. No inter-visibility issues are raised. An upgraded sealed vehicle entrance has been recommended to make the entrance surface safer for braking and make it more visible to guests unfamiliar with the location. Traffic will not exceed permitted levels which would normally trigger consideration of an upgrade. This upgrade has been included as a condition. There appear to be no effects issues underpinning this condition. While it is a worthwhile upgrade, the decision whether to upgrade should be left to the applicant.

## Visual effects

53. The application shows landscaping of the car park and nearby areas including the rear of the farm shed. The “existing environment” under the OPD, does not require carparks for fewer than 8 cars to be landscaped.
54. I note that the planners report identifies this condition as addressing some of the submitters concerns regarding the use of exotic species, and the contention that this is out of the ordinary in. Based on my observation exotic species are commonplace on the application site and receiving environment, and therefore consider that contention to exaggerate the potential adverse effect to be avoided, remedied or mitigated
55. The applicants intend to plant these areas. However recommended Condition 4 appears unduly severe. Our concerns relate to the 2m minimum height of plant specimens at planting, their excessive mature height which will have adverse effects on the amenity of the site. Also it is unclear whether planting will be confined to zone specific species from the Restoration Planting Guide for the Egmont Ecological District. Given this area is outside the sites Native Bush and is in the “existing environment” where owners have freedom to plant what they wish, plant types should not be restricted.
56. The applicants have a nursery stock of plants for this landscaping that are Egmont Ecological District species which are not all zone specific and wish to use these plants.

## Ecological effects

57. The Planners Report includes a detailed assessment of potential ecological effects resulting from the proposal. Ecological effects are also a key element of the submission.
58. As noted above, the existing environment includes the cabin sites, as well as a demonstrated commitment to remediation of the indigenous vegetation on the application site. The application outlines a number of additional measures, like extended pest/predator control that are anticipated.
59. I accept that the protection of significant INDIGENOUS VEGETATION and significant habitats of indigenous fauna is a matter of national importance. This is implemented by the objectives, policies and rules of the OPD. I consider that policy 16.2 is most applicable in this instance - *Land use, development and subdivision should not result in adverse effects on, and should enhance where practical, the quality and intrinsic values of areas of INDIGENOUS VEGETATION and habitats.* The management strategy notes that no rules are included to implement this policy, rather conditions of consent included where required.
60. The planners report concluded that potential adverse ecological effects can be managed by the development of an “Ecology Management Plan” secured by condition 7.
61. I consider that this condition is out of step with the scale of potential adverse ecological effects generated by the application. Notwithstanding the demonstrated commitment to remediating the vegetation on their property over the last decade, the condition as

currently recommended would result in a greater level of active management than required for the Significant Natural Areas of the district.

62. The applicants are considering working with the TRC to prepare a Plan covering the essential ecological aspects. This is a service available to any land owner.
63. We recommend that this condition be removed in its entirety. Should the draft district plan progress, then the rules contained within the proposed district plan that may apply to the site, as well as the regional pest management plan for Taranaki provide sufficient regulatory oversight to manage the concerns raised in the submission.

## Conditions

**Conditions 1 & 11.** The footprint of each cabin is nominally 28 sq.m. The liveable floor areas vary but exceed 25 sq.m. due to the extent of mezzanine floors which don't change the footprint. The intensity of the activity is governed by the number of beds which are to be limited to sleeping 4 persons. Minimal variations in Cabin footprint and floor area enclosed by building envelopes will not change the intensity of use and effects. It is suggested that a maximum cabin footprint based on the largest cabin be set and a limit of beds to sleep up to 4 persons be applied.

**Condition 3.** This condition requires a survey plan. Comprehensive accurate survey information is being prepared by Juffermans Surveyors and detailed by the Applicants at the Hearing. This will be required for Building Consent and create a record in terms of Bush clearance Existing Use. Once the information is lodged this condition becomes unnecessary.

**Condition 4.** This primarily relates to landscape and screen planting of the rear of the shed, the carpark and adjoining areas. For the reasons given in the effects section this planting condition is in our view unreasonable in its present form if zone specific planting is to be required. It is suggested that the condition make it clear that zone specific planting is not required and the 2m minimum height at planting be replaced with species that attain 2m height in 5 years.

**Condition 7.** This relates to two matters. Firstly the trimming of the Bush vegetation. Two matters that require to be added are the right to trim branches of trees exceeding 300mm diameter where they traverse into the "cleared areas" and affect the use of the area or interfere with the cabin - say knock against the wall or roof. This condition should also include the right to remove fallen trees that block tracks or other areas needing access. The requirement to have an "Ecology Management Plan" should be removed for the reasons given in the effects section.

**Condition 18.** This relates to the formation of a new vehicle entrance. Given that traffic is within permitted levels, is this condition justified? If beyond the scope of effects that should be considered, could it be left to the applicants to consider?

**Condition 19.** This condition relates to the cessation of the activity. We query what the underlying rationale was that gave rise to this condition. If the condition proves to be necessary it needs to be adjusted to accommodate normal situations like temporary closure say for winter months, lengthy overseas trips, illness or change of ownership or foreclosure. It is suggested the cessation of the activity be defined. i.e. what factors determine the permanent cessation of business and a realistic time frame applied. It might be appropriate to signal the consent holders right to seek consent for a different activity as the secluded location of the cabins may suit several other activities such as meditation or alternative health therapies.

## Conclusions

- i. Due to its siting within excavated contour and North facing aspect with only ventilation openings facing neighbours, the Farm Shed side yard encroachment in my opinion has minimal impact on neighbours.
- ii. The Cabins will be sited totally within the Native Bush to the extent that the built structure of the Cabins will have no visual impact beyond their immediate location. The total habitable building footprint is modest compared with what is permitted, so the important aspect of Rural Character identified by the OPD being “...*dominance of open space over built form*” within this immediate locality will continue largely unaffected. Given this, the visual and other impacts regarding the number of “Habitable Buildings” are in this instance considered acceptable.
- iii. Other than intermittent increased traffic movements, variable levels of carparking located well within the site, soft lighting and a sign, all of which will meet OPD permitted standards, there will be little change to how the farmlet appears today.
- iv. Neighbourhood traffic levels will increase as new sites are built on and visitor levels to the eco-tourism hub increase. Land use within the neighbourhood will change. The rural lifestyle development of the submitters land is also part of this. At the scale proposed, the potential adverse effects of the proposal on the receiving environment and local and wider rural character are considered acceptable.

M Ralph Broad

Environmental Planner for Applicants