

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

the Resource Management Act 1991

a resource consent application by T and L Swan for a two (2) lot subdivision at 170 Ackworth Road, Lepperton, New Plymouth (SUB19/47283).

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

Independent Commissioner:

Mark St.Clair

12 October 2020

APPOINTMENTS

- [1] Pursuant to Section 34A of the Resource Management Act 1991 (RMA), independent commissioner Mark St. Clair was appointed as a commissioner by New Plymouth District Council (NPDC) to hear and determine the application lodged by the “Applicant” T and L Swan for resource consent for a two (2) lot subdivision at 170 Ackworth Road, Lepperton, New Plymouth.

PROCEDURAL MATTERS

Directions

- [2] On 5 August 2020, I issued Minute #1 directing the pre-circulation of Council’s Section 42A Report, all of the Applicant’s evidence, and any expert evidence from the submitter as required by Section 103B of the RMA. In that Minute I also requested that the parties liaise amongst themselves to facilitate conferencing of the relevant experts to potentially narrow the issues in contention.
- [3] This latter request generated some questions from the parties as to when the conferencing should occur, in which order and who should be present. In response to these questions I set out Minute #2 dated 14 August 2020 requesting when the conferencing should occur, that landscape experts should conference first followed separately by the planning conferencing and that the parties and experts should refer to the Environment Court Practice Note 2014, Appendix 3 which clearly sets out the relevant matters as to expert conferencing.
- [4] On 10 September 2020, I received copies of the Joint Witness Statements (JWS) for the conferencing sessions of the landscape architects¹ and the planners². On reviewing the JWSs I was somewhat surprised to note that two of the planning witnesses were present at the landscape architects conferencing session. At the hearing I enquired as to why this had occurred. Following the verbal responses, I made the point that this was not in accordance with the request set out in Minute #2, nor the Environment Court Practice Note 2014. For completeness I attach the minutes related to this hearing in Appendix 1.

Site visit

- [5] I undertook a site visit on 10 September 2020 to familiarise myself with the subject site, the submitter’s property and the surrounding environment. I was accompanied on the site visit, by Mr P Sousa on behalf of the Applicant, Mr P Butterworth on behalf of the submitter and Ms L Buttimore from NPDC.

¹ Landscape Architects Joint Witness Statement (Landscape JWS), dated 10 September 2020

² Planners Joint Witness Statement (Planning JWS), dated 9 September 2020

Decision format

- [6] I have had regard to the requirements of Section 113 of the RMA when preparing this decision. In particular I note and have acted in accordance with Section 113(3) which states:
- “A decision prepared under subsection (1) may, -*
- (a) instead of repeating material, cross-refer to all or a part of -*
 - (i) the assessment of environmental effects provided by the applicant concerned;*
 - (ii) any report prepared under section 41 C, 42A, or 92; or*
 - (b) adopt all or a part of the assessment or report, and cross-refer to the material accordingly.”*
- [7] During the course of the hearing it became apparent that there were particular issues in relation to the relevant rule trigger for the subdivision, the application of permitted baseline, rural character and amenity effects, and consistency with the policy framework of the District Plan. I therefore focused my questions on these matters. I have consequently focused my decision on those same matters.

THE APPLICATION PROCESS

- [8] Juffermans Surveyors Ltd, on behalf of T and L Swan, lodged a resource consent application with NPDC for a two lot submission at 170A Ackworth Road, Lepperton, New Plymouth (the subject site) on 26 April 2019.
- [9] The consent application was limited notified to the owners and occupiers of 198 Ackworth Road on 21 December 2019 with the submission period closing on 10 February 2020.
- [10] NPDC received one submission, from Mrs C Butterworth, in opposition to the proposal. Mrs Butterworth indicated that she wished to be heard.
- [11] A summary of the submission was detailed in paragraph 31 of the Section 42A report³ prepared by Ms Buttimore, for the hearing and is not repeated here.
- [12] I record that I read the submission in full and I have had regard to it as part of my evaluation of the application.
- [13] For completeness, I record that the Applicant obtained written approval from the owners and occupiers of 193 and 198 Ackworth Road. In addition, a new record of title was created following close of submissions in relation to an approved subdivision at 193 Ackworth Road (193A Ackworth Road). This resulted in the applicant obtaining the reapproval from W and V Rowe of 193 Ackworth Road, for the further amendments to the proposal.⁴
- [14] As noted above, all expert evidence was pre-circulated in accordance with Section 103B of the RMA. I record that I read all of the evidence and have taken it into account as part of my evaluation of the application.

³ Section 42A Report, Ms L Buttimore, Para 31

⁴ Section 42A Report, Ms L Buttimore, Paras 28 - 29

THE HEARING and ATTENDANCES

- [15] The hearing was held in the New Plymouth Room at the New Plymouth District Council Offices, 84 Liardet Street, New Plymouth on 11 September 2020, commencing at 9:00am.
- [16] I adjourned the hearing at 3.55pm on 11 September 2020, in order to provide sufficient time for the Applicant's right of reply in writing.
- [17] The reply statement from the Applicant was duly filed on 17 September 2020 and distributed to the parties.
- [18] Having considered that I had all the information I required, I closed the hearing by way of minute (Minute #4) on 21 September 2020.
- [19] The attendances at the hearing were as follows:

Applicant

- [20] For the Applicant:
- Mr Trevor Swan – the Applicant.
 - Mr Paul Sousa – Planner, Integrated Planning Solutions Limited.
 - Ms Martha Dravitzki – Landscape Architect – self-employed.

Submitter

- [21] For the Submitter:
- Mrs Colleen Butterworth – Submitter - 193 Ackworth Road.
 - Ms Sarah Ongley – Counsel for the Submitter - Barrister.
 - Mr Richard Bain, Landscape Architect – self-employed.
 - Mr Jeremy Brophy, Planner, BTW.

Council officers

- [22] The following council officer and consultant were in attendance and responded to matters raised:
- Ms Laura Buttimore – Planner for NPDC, Section 42A reporting officer.
 - Ms Erin Griffiths – Consultant Landscape Architect, Natural Capital.
- [23] A Section 42A officer's report was prepared by Ms Buttimore, Planner at NPDC.
- [24] I was assisted in an administrative capacity by Ms Julie Straka, Governance Lead, at NPDC.
- [25] The parties provided additional material in response to my directions and questions at the hearing.

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

LEGAL DESCRIPTION AND ZONING

[27] The property (“**the subject site**”) is legally described as follows:

Legal Description:	Lot 1 DP 414901
Site Area:	4.7830 Ha more or less
Site Address:	170 Ackworth Road, Lepperton, New Plymouth
District Plan Zone:	Operative District Plan – Rural Environment Area Proposed District Plan – Rural Production Zone

THE PROPOSAL

[28] The proposal was fully described in the application⁵ and the Section 42A officer’s report prepared by Ms Buttimore.⁶ By way of overview I have included a brief description of the proposal here, including amendments made during the course of the hearing.

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

- to undertake a subdivision as follows:

Lot 1 – 4.27ha containing the existing dwelling.

Lot 2 – 4130m² vacant allotment.

[30] On 23 July 2020, the Applicant submitted an amended scheme plan, including revised landscaping measures:

- *The road frontage landscaping on Lot 2 was reduced from 5m in width to 1m in width to reflect the removal of the Barberry hedge and the recently planted Pittosporum hedge.*
- *The proposed landscaping along the southern boundary of Lot 2 was removed in its entirety. The applicant stated that this was because the submitter to the application did not support the proposed planting on this boundary.*⁷

⁵ Application for a Two-Lot Subdivision Resource Consent, dated 18 April 2019, Juffermans Surveyors Ltd, Pages 6 – 8

⁶ Section 42A Report, Ms L Buttimore, Paras 7 - 11

⁷ Section 42A Report, Ms L Buttimore, Para 11

- [31] At the hearing, the Applicant proposed further amendments to the application, including additional boundary screening planting and height and story limits on any future habitable or other building.⁸

ACTIVITY STATUS

- [32] The Planning JWS⁹ refers to the applicable rules as Rur78 and 83 under the NPDC Operative District Plan (ODP) which I have set out as follows:

Rur78

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

Fully Discretionary

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

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

Rur83

Parameter – requirement for existing BUILDINGS to meet standards in relation to the new boundaries

Fully Discretionary

Does not meet the conditions for a permitted activity nor the standards and terms for a controlled activity

- [33] The other applicable rules Rur79, Rur81 and Rur82 have a controlled activity status¹⁰. I record that the planning witnesses agreed that a vehicle access point from Lot 2 to Ackworth could be established to comply with Rur79 and Appendix 22.2A of the ODP¹¹. Overall, the application is to be assessed as a discretionary activity. At the hearing I questioned Mr Sousa and Ms Buttimore so as to clarify which rules in ODP applied to the application. From that clarification, the evidence and the Planning JWS, I am satisfied as to the identification of the applicable rules and the activity status. For completeness, I record that the proposal did not trigger rules under the PDP, as no rules of relevance to the proposal currently have immediate legal effect.¹²

STATUTORY PROVISIONS

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

⁸ Summary Statement, Mr P Sousa, Paras 7 -11

⁹ Planning JWS, Dated 9 September 2020, Paras 2.1 – 2.2

¹⁰ Section 42A Report, Ms L Buttimore, Para 19

¹¹ Planning JWS, Dated 9 September 2020, Para 2.2

¹² Planning JWS, Dated 9 September 2020, Para 2.3

SECTION 104B OF THE RMA

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

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

After considering an application for a resource consent for a discretionary activity or non-complying activity, a consent authority—

(a) may grant or refuse the application; and

(b) if it grants the application, may impose conditions under section 108.

PRINCIPAL ISSUES IN CONTENTION

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

- Application of permitted baseline
- Rural character and rural amenity effects;

I address these issues in the following sections.

Application of permitted baseline

[37] The issue of the applicability of the permitted baseline was well traversed in the evidence, and at the hearing itself.

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

- (2) When forming an opinion for the purposes of subsection (1)(a), a consent authority may disregard an adverse effect of the activity on the environment if a national environmental standard or the plan permits an activity with that effect.*

[39] In response to questions, Ms Ongley's submission was that the application of the permitted baseline was discretionary, but noting that in her written submissions¹³ that such discretion should not be exercised given the underlying zoning.

[40] Ms Buttimore set out in the Section 42A report her view as to the appropriateness of the consideration of a permitted baseline assessment. Ms Buttimore noted the ODP does not provide for subdivision as a permitted activity, hence there is no permitted baseline¹⁴ and nor is a second habitable building permitted¹⁵ in the location of proposed Lot 2. Mr Brophy for the submitter concurred with that assessment¹⁶.

[41] Mr Sousa for the Applicant, acknowledged that subdivision and a second dwelling was not permitted¹⁷. However, Mr Sousa's view was that a 10m high building, other than a dwelling, could be erected within 10m of the southern boundary of the existing property closest to the Submitter's property¹⁸.

¹³ Legal Submissions, Ms S Ongley, Paras 8 - 9

¹⁴ Section 42A Report, Ms L Buttimore, Para 38

¹⁵ Section 42A Report, Ms L Buttimore, Para 39

¹⁶ Evidence in Chief, Mr J Brophy, Para 25

¹⁷ Evidence in Chief, Mr P Sousa, Para 34 and 36

¹⁸ Evidence in Chief, Mr P Sousa, Para 36 and Figure 5

[42] As to the applicability of comparing the effects of a subdivision to a permitted activity Ms Buttimore's view was that this was not appropriate or reasonable, noting in relation to an implement shed, the absence of frequent vehicle crossings, outdoor living spaces, garden and curtilage areas¹⁹. Ms Buttimore also considered the establishment of vegetation along the boundary between the Applicant's and Submitters properties²⁰, opining that the vegetation would not result in comparable effects to the proposed two lot subdivision and the development right that would be enabled on proposed Lot 2. In evidence Mr Brophy, for similar reasons concurred with Ms Buttimore²¹ concluding that;

"... the permitted baseline is not considered to be useful in discounting any potential effects resulting from the building platform that would be created as a result of this subdivision. In this regard it is considered appropriate to assess all potential environmental effects."²²

[43] Mr Sousa disagreed with the 'findings' of Ms Buttimore²³, and in summary concluded that;

Based on the foregoing permitted activity entitlements for the parent site, it is considered that any potential adverse effects on the outlook from 198 Ackworth Road arising from the subsequent development of proposed Lot 2 will be no greater than is permitted by the District Plan, particularly noting that there are no design or amenity performance standards in the District Plan controlling the appearance of any building, and may be less than those that maybe generated by permitted activities, particularly if conditions of consent offered by the applicant are agreed.²⁴

[44] Mr Sousa returned to the matter of the permitted baseline in reply²⁵, expressing concern at the views of the other expert witnesses²⁶, noting examples, other than implement sheds, of buildings that were permitted by the plan²⁷, and addressing noise and lighting effects²⁸. Mr Sousa's concluding paragraph in reply being:

Therefore, in the context of the permitted baseline of rural activities and buildings that can currently be established on the application site in proximity to the submitter's property, taking into consideration the character of the surrounding area, we consider the effects arising from allowing the subdivision will actually be less adverse than may be generated by such permitted activities or structures.²⁹

[45] Having considered legal submissions and all the evidence in relation to this matter, I am persuaded by the evidence of Ms Buttimore and Mr Brophy and the reasons set out in that evidence that the application of the permitted baseline in this case is not appropriate.

¹⁹ Section 42A Report, Ms L Buttimore, Para 40 - 41

²⁰ Section 42A Report, Ms L Buttimore, Para 40 - 41

²¹ Evidence in Chief, Mr J Brophy, Para 25 -28

²² Evidence in Chief, Mr J Brophy, Para 30

²³ Evidence in Chief, Mr P Sousa, Para 23- 24 and Summary Statement, Mr P Sousa, Paras 24 - 26

²⁴ Evidence in Chief, Mr P Sousa, Para 37

²⁵ Evidence in Chief, Mr P Sousa, Para 23- 24 and Summary Statement, Mr P Sousa, Paras 24 - 26

²⁶ Reply Statement, Mr P Sousa, Para 28

²⁷ Reply Statement, Mr P Sousa, Paras 29 - 30

²⁸ Reply Statement, Mr P Sousa, Para 32

²⁹ Reply Statement, Mr P Sousa, Para 33

Rural Character and Rural Amenity Effects

- [46] Rural character and rural amenity effects were raised as an issue by the submitter Mrs Butterworth. At the hearing, Mrs Butterworth expanded on the points raised in her submission.
- [47] In terms of this decision I have considered all of the identified matters. I have set out those main issues and my findings in summary form under the headings below.
- [48] Expert evidence was filed from three landscape architects and I took the opportunity at the hearing to question them all. In structuring the decision, I have found it helpful to address the evidence as to private receptor effects, wider public effects, cumulative effects, and mitigation. In relation to the methodology used by the three landscape architects, in response to my questions, there was general agreement between them that the approach was consistent, but there was some differences to the implications as to rural character and amenity.

Visual Effects on Private Receptors

- [49] As noted above, written approvals were obtained from the surrounding properties, with the exception of Mrs Butterworth at 198 Ackworth Road. Hence, in relation to effects on private receptors the evidence focused on the effects on that submitter.
- [50] In summary, the evidence of Ms Dravitzki, landscape expert for the Applicant³⁰, was that when accounting for factors such as; the distance between the dwelling at 198 Ackworth Road and any future development on proposed Lot 2, the potential development that may occur within the area of proposed Lot 2 without a resource consent, and the limitations of any existing views from 198 Ackworth Road; that the effects would be moderately adverse, but would reduce to low when mitigating factors and mitigation are considered. I return to mitigation in more detail later in the decision.
- [51] In contrast Mr Bain, landscape expert for the Submitter, considered that the landscape change would be highly noticeable particularly noting the orientation of the dwelling and outside area at 198 Ackworth Road, concluding that there would be significant adverse amenity effects from the creation of Lot 2 and its potential future development. To address these adverse effects, Mr Bain considered that the area of the rural outlook from 198 Ackworth Road across proposed Lot 2 should be kept clear of any buildings.³¹
- [52] Ms Griffith, landscape expert for Council, similarly concluded that 198 Ackworth Road had a high sensitivity to change and assessed that the overall significance of change as moderate to high.³² At the time of preparing the memorandum for inclusion in the Section 42A report, Ms Griffith advised at the hearing that there was not a landscape plan included with the application, so Ms Griffith addressed mitigation matters in her presentation at the hearing and in response to my questions.

Visual Effects on Wider Public

- [53] In the Landscape JWS, the experts agreed that landscape and visual effects of the proposal on the wider environment of the Rural Environment Area are acceptable

³⁰ Evidence in Chief, Ms M Dravitzki, Paras 26 - 32

³¹ Evidence in Chief, Mr R Bain, Paras 23 - 30

³² Section 42A Report, Appendix 2, Ms E Griffith, Pages 11 -13

subject to mitigation measures.³³ A similar statement is included in the Planning JWS.³⁴

Mitigation

- [54] The Landscape JWS records disagreement between the experts as to the depth and species of planting required for the mitigation when viewed from Ackworth Road.³⁵ While agreeing that measures such as no build areas and that new and existing planting along the southern boundary of proposed Lot 2 could assist with mitigation, the experts disagreed as to the extent of the no build areas and planting to address the adverse effects.³⁶
- [55] Ms Dravitzki view was that the effects of the proposal were largely avoided by the positioning of proposed Lot 2 at the southern part of the property.³⁷ Ms Dravitzki also set out the mitigation measures included in the application and additional recommended measures including, directive lighting hoods, single story restriction for any dwelling, colour controls and planting.³⁸
- [56] In considering the mitigation measures, Mr Bain's view was that the measures did not address effects on the occupants of 198 Ackworth Road, opining that the measures were generic in nature and only addressed public view points.³⁹ Mr Bain's view was that the most appropriate mitigation was a no build area of the rural outlook area from 198 Ackworth Road across proposed Lot 2 as shown in the Plan in Appendix 2 to his evidence.⁴⁰ Mr Bain also recommended a series of additional measures.⁴¹
- [57] Ms Griffith did not consider that the mitigations in the application were sufficient to reduce the potential adverse effects to an acceptable level and similarly recommended a series of mitigation measures. In response to the matters raised, Ms Griffith remained of view as set out in her memorandum that a dwelling beyond the 30m set back would be of moderate effect and opined that any proposal in the 30m set back would be more appropriate.
- [58] At the hearing I questioned all the landscape architects and others as to the potential mitigation measures. The outcome of that dialogue raised additional issues. The first being as to the appropriateness of some of the recommended conditions when the application was just for a subdivision consent and not a land use consent, noting that no specific dwelling in a specific location was proposed. Second in relation to the no build in the rear of proposed Lot 2 recommended by Mr Bain, which would result in any future dwelling being within the 30m setback from the front yard, something that was not applied for, nor to which the written approval had been sought or obtained.

Overall Rural Character and Amenity

- [59] The three planners also addressed rural character and amenity effects. Mr Sousa, relying on his own assessment in the AEE and that of Ms Dravitzki, in summary considered the proposal as not being out of character with the local rural environment given the presence of smaller lifestyle lots in the surrounding area⁴² and recommending conditions to address amenity effects.⁴³

³³ Landscape JWS, Para 2.1

³⁴ Planning, JWS, Para 4.3

³⁵ Landscape JWS, Para 4.3

³⁶ Landscape JWS, Para 4.4 – 4.7

³⁷ Evidence in Chief, Ms M Dravitzki, Para 41

³⁸ Evidence in Chief, Ms M Dravitzki, Paras 43-46

³⁹ Evidence in Chief, Mr R Bain, Paras 31- 34

⁴⁰ Evidence in Chief, Mr R Bain, Para 35

⁴¹ Evidence in Chief, Mr R Bain, Para 36 - 37

⁴² Evidence in Chief, Mr P Sousa, Paras 38 - 43

⁴³ Evidence in Chief, Mr P Sousa, Paras 44 - 54

- [60] Again in summary, Mr Brophy, considered that the rural outlook to the north from 198 Ackworth Road was a fundamental contributor to the rural character values and that separation and orientation assist in the maintenance of rural character.⁴⁴ In addition, Mr Brophy did not consider that a proportional higher number of lifestyle lots appropriate to be sufficient for the proposal to be approved.⁴⁵ As to amenity effects, Mr Brophy, relying on the assessments of Mr Bain and Ms Griffith considered that that the mitigation measures set out by Mr Bain were required in order to reduce the effects to an acceptable level.⁴⁶
- [61] Finally, in summary, Ms Buttimore, assessed the rural character effects⁴⁷ noting the definition of rural character in the District Plan and specifically the key elements of spacious, low density and vegetated, opining that the, “... *creation of Lot 2 in the proposed location will result in a loss of open space, low density built form that is necessary to retain rural character.*”⁴⁸

Rural Character and Amenity Effects Conclusion

- [62] Having considered all of the evidence on this matter, and the case law presented, overall, I am not satisfied in terms of resource management effects that the proposed development does not create adverse rural character and rural amenity effects, that subject to conditions would be acceptable. In reaching this finding, I am persuaded by the evidence of Mr Bain, Ms Griffith, Mr Brophy and Ms Buttimore as to scale and significance of the effects. As identified in paragraph 58 above, there were additional issues raised as to mitigation that were problematic and as such, I find they are not able to be imposed.

Section 104 RMA

- [63] Section 104 (1) of the RMA requires that a consent authority:
- (1) *When considering an application for a resource consent and any submissions received, the consent authority must, subject to Part 2, have regard to—*
- (a) *any actual and potential effects on the environment of allowing the activity;*
and
- (b) *any relevant provisions of—*
- (i) *a national environmental standard;*
(ii) *other regulations;*
(iii) *a national policy statement;*
(iv) *a New Zealand coastal policy statement;*
(v) *a regional policy statement or proposed regional policy statement;*
(vi) *a plan or proposed plan, and*
- (c) *any other matter the consent authority considers relevant and reasonably necessary to determine the application.*

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

⁴⁴ Evidence in Chief, Mr J Brophy, Paras 36 -37

⁴⁵ Evidence in Chief, Mr J Brophy, Paras 36 -38

⁴⁶ Evidence in Chief, Mr J Brophy, Paras 43-49

⁴⁷ Section 42A, Ms L Buttimore, Paras 48 - 67

⁴⁸ Section 42A, Ms L Buttimore, Para 67

National instruments

[65] Ms Buttimore⁴⁹ and Mr Sousa⁵⁰, were in agreement that there are no National Environment Standards relevant to the application. No evidence was filed in relation to National Policy Statements. I heard no expert evidence to the contrary, so I accept Ms Buttimore's and Mr Sousa's evidence.

Taranaki Regional Policy Statement ("the RPS")

[66] Ms Buttimore⁵¹ opined and Mr Sousa⁵² agreed that the subdivision would not impact high level regional issues identified in the RPS such as water, soil and land, air, freshwater, indigenous biodiversity, natural and historic features, waste management, minerals, energy and the built environment.

[67] Ms Buttimore identified Section 10 of the RPS and in particular AMY Objective 1 and AMY Policy 1, which seek to maintain and enhance amenity values both in a rural and urban setting. Ms Buttimore's effects assessment concluded that the application did not provide for the maintenance of rural character and amenity, hence her view was that application was not consistent with that specific objective and policy.⁵³

[68] In contrast Mr Sousa considered, in summary, that the proposal was entirely consistent with the outcomes sought by the RPS noting the environmental characteristics of the specific locality must be considered when undertaking an assessment of rural character.⁵⁴

[69] I have already reached a finding as to effects above, so do not repeat it here. However, I rely on that finding and in this case prefer the evidence of Ms Buttimore as to the proposal not being consistent with specific provisions of the RPS.

Operative New Plymouth District Plan (ODP)

[70] The ODP became operative in 2005.

[71] The application is a discretionary activity under the ODP. Ms Buttimore identified in the Section 42A officer's report her view of the provisions of the ODP relevant to this application.⁵⁵ Mr Sousa provided his assessment of the relevant objectives and policies in his evidence⁵⁶, primarily with reference to the assessment he undertook in the application.⁵⁷ Mr Brophy also set out his view as to the relevant provisions with a focus on the provisions as they relate to the management of effects on rural character and amenity, and traffic.⁵⁸ Mr Brophy excluded Policy 4.1 from his assessment, considering that that policy related to controlled activities, rather than discretionary activities.⁵⁹ I questioned the planners at the hearing as to the relevance of Policy 4.1 given the discretionary activity status, a matter to which Mr Sousa addressed in reply, agreeing with Mr Brophy.⁶⁰ While there may be a linkage as to the construction of the rule, there was no evidence presented as to the section 32 analysis or report showing the derivation from policy to rule. Ms Buttimore, in response to my questions considered that Policy 4.1 applied across all activity

⁴⁹ Section 42A Report, Ms L Buttimore, Para 80

⁵⁰ Evidence in Chief, Mr P Sousa, Para 62

⁵¹ Section 42A Report, Ms L Buttimore, Para 81

⁵² Evidence in Chief, Mr P Sousa, Para 63

⁵³ Section 42A Report, Ms L Buttimore, Para 82

⁵⁴ Evidence in Chief, Mr P Sousa, Para 64

⁵⁵ Section 42A Report, Ms L Buttimore, Para 21

⁵⁶ Evidence in Chief, Mr P Sousa, Paras 65 - 66

⁵⁷ Application, Pages 21 -25

⁵⁸ Evidence in Chief, Mr J Brophy, Paras 57 - 64

⁵⁹ Evidence in Chief, Mr J Brophy, Para 59

⁶⁰ Reply Statement, Mr P Sousa Para 13

status'. I concur and find that the Policy 4.1 is a relevant consideration. Apart from that matter, there was general consistency between all three planning witnesses as to the relevant objectives and policies identified.

[72] For the record I find the following provisions relevant as identified in the planning witness evidence and the application:

- Objective 1, Policy 1.1
- Objective 4, Policy 4.1, 4.2, 4.5, 4.8
- Objective 20, Policy 20.7
- Objective 22, Policy 22.1

[73] Ms Buttimore and Mr Brophy were in agreement that the proposal was contrary to Objective 4 and Policies 4.2 and 4.5. For completeness I set out those provisions below;

Objective 4 To ensure the subdivision, use and development of land maintains the elements of RURAL CHARACTER.

Policy 4.1 Control the density and scale of subdivision by providing for one small ALLOTMENT where there is a large balance area, that promotes Spaciousness and a Low Density, Production Orientated Environment.

Policy 4.2 Control the density, scale, location and design of subdivision by providing limited opportunities for small ALLOTMENT subdivision, having consideration to the following matters:

(a) The environment is spacious, maintains a low density and the subdivision provides a large balance area.

(b) The subdivision is of such a scale to ensure the intensity of use is typical of the rural environment and not of an urban or lifestyle area.

(c) The subdivision and resulting development is not highly visible in the landscape and there is no apparent aggregation of development because of;

(i) the undulating nature of the landscape;

(ii) the design and layout of the ALLOTMENTS and any servicing requirements;

(iii) the design and visual treatment of the resulting development.

(d) The contours of the landscape are retained and there is limited need for EXCAVATION and FILLING.

(e) The subdivision does not impact OUTSTANDING LANDSCAPES and REGIONALLY SIGNIFICANT LANDSCAPES and other features protected by other OVERLAYS.

(f) There are no community costs associated with upgrading INFRASTRUCTURE as a direct result of the subdivision and development.

(g) The rural nature and purpose of rural INFRASTRUCTURE (small scale, un-serviced with a lack of urban INFRASTRUCTURE) is maintained.

- (h) The proposed ALLOTMENT size, shape and resulting land use will recognise the production orientated nature of the rural area.*
- (i) Consistency of the proposal with Policy 4.5.*

Policy 4.5 *Ensure that the design of subdivision and development is sensitive to the surrounding environment. In particular the following design principles will be considered:*

- (a) Ensure appropriate overall density by maintaining the level of built form expected in the rural environment.*
- (b) Ensure the intensity and scale of the development is in keeping with RURAL CHARACTER.*
- (c) Ensure that ALLOTMENTS and BUILDINGS are in context with the surrounding environment and are positioned to recognise natural features in the landform.*
- (d) Ensure that ALLOTMENTS and BUILDINGS are sited and designed in a manner that is integrated with the surrounding environment with minimal disturbance to the landform by considering:
 - (i) softening with vegetation related to the area and treatment of boundary elements;*
 - (ii) BUILDING design of a form and scale that is in keeping with the landscape;*
 - (iii) the use of materials, that are in keeping with the environment, including consideration of colour and low reflectivity;*
 - (iv) low level INFRASTRUCTURE and services that is rural in nature.**
- (e) Consistency of any full discretionary activity with design guidelines.*
- (f) Consideration towards any recommendations from a design panel.*

[74] The views of Ms Buttimore and Mr Brophy, in summary were that the proposal was inconsistent with the objective and policies, in that, it did not provide for a large balance lot, the reduction in openness, spaciousness and low density rural character; the mitigation measures did not respond to the existing environment, that design principles were not addressed and being of a scale and intensity of a lifestyle area. Mr Sousa's was of a different view, opining the importance of the consideration of the objectives and policies within the context of the existing environment, that valuable rural production land is not lost and that the character of the surrounding area is maintained.⁶¹ In reply, Mr Sousa provided further explanation as to the reasons for his view, addressing Objective 1, Policy 1.1, Policy 4.2 in relation to Policy 4.5 and the definition of rural rural character, concluding that the proposal will maintain the rural character of the area.⁶² Mr Sousa also addressed the Rural and Subdivision Design Guidelines in reply. I return to those later in the decision.

[75] Having carefully considered the policy framework, in particular in relation to Objective 4, Policies 4.1, 4.2 and 4.5, I accept the evidence of Ms Buttimore and Mr Brophy that the proposal is not consistent with that policy direction.

⁶¹ Evidence in Chief, Mr P Sousa, Paras 66

⁶² Reply Statement, Mr P Sousa, Paras 14 - 23

Proposed New Plymouth District Plan (PDP)

- [76] The PDP was publicly notified on 23 September 2019.
- [77] As I noted in paragraph 33 above, the proposal did not trigger rules under the PDP, as no rules of relevance to the subdivision currently have effect.⁶³ However, the objectives and policies of the PDP do have legal effect⁶⁴ and Ms Buttimore identified the following as relevant to the proposal:
- Objectives: SUB-O1, SUB-O2, SUB-O3, RPROZ – O2 to RPROZ – O7
Policies: SUB-P1 to SUB-P5, RPROZ – P1, RPROZ – P3 to RPROZ – P3.⁶⁵
- [78] As with objectives and policies in the ODP, Ms Buttimore’s view, in summary, was that the proposal was inconsistent with the relevant PDP provisions, noting that the new policy framework was more directive than the operative plan, highlighting that
- “RPROZ-P3 requires you to avoid incompatible activities like residential and rural lifestyle living where their effects on rural character and amenity cannot be avoided, remedied, or mitigated”* and in this case considering that potential effects on rural character and amenity cannot be adequately mitigated.⁶⁶
- [79] Mr Brophy concurred with Ms Buttimore’s assessment of the PDP again highlighting Policy RPROZ-P3.⁶⁷
- [80] Mr Sousa, rightly noting that the application was lodged in April 2019 and that the PDP was not notified until 23 September 2019;⁶⁸ addressed the objectives and policies of the PDP in evidence. Mr Sousa added to the policies identified by Ms Buttimore, to include SUB-P10 and SUB-P12 to SUB-P14 and set out his assessment in the table at paragraph 71 of his evidence. In conclusion, Mr Sousa noted that, *“in the context of the low production value of the existing site, the nature of the surrounding activities that gives rise to an overall rural residential cluster environment that the proposal is not contrary to the outcomes sought by the objectives and policies of both the Proposed Plan and District Plan.”*⁶⁹
- [81] Considering both sets of evidence, I find the evidence of Ms Buttimore and Mr Brophy more persuasive and reply on the reasoning set out in their evidence as to the proposal not being consistent with objectives and policies of the PDP.
- Summary Operative and Proposed District Plans*
- [82] At the hearing I questioned the planning experts and Counsel for the submitter as to what weight, if any, should be attached to the PDP objectives and policies. In response, the replies were in general agreement that little weight should be attributed to the PDP as the further submission period had recently closed on 25 August 2020. I note that Mr Brophy and Ms Buttimore were further of the view that the weighting was of little value given that proposal was inconsistent under both Plans. I have adopted that approach.
- [83] Having considered all the evidence as to ODP and PDP; and noting the weighting finding above I find that overall the proposal is inconsistent with the relevant objectives and policies of the Plans.

⁶³ Planning JWS, Dated 9 September 2020, Para 2.3

⁶⁴ Section 42A Report, Ms L Buttimore, Para 93

⁶⁵ Section 42A Report, Ms L Buttimore, Para 94

⁶⁶ Section 42A Report, Ms L Buttimore, Para 96

⁶⁷ Evidence in Chief, Mr J Brophy, Paras 65 -68

⁶⁸ Evidence in Chief, Mr P Sousa, Para 68

⁶⁹ Evidence in Chief, Mr P Sousa, Para 72

Section 104(c) Any other matter

[84] In Ms Buttimore's assessment of effects analysis, Ms Buttimore identified the Council's Rural Subdivision and Development Guidelines (May 2012) (the Guidelines) as being applicable to the proposal and opined that the design principles had not been considered or applied to the proposal to ensure the retention of rural character.⁷⁰ In response to my questions at hearing, Ms Buttimore considered that the guidelines were a relevant Section 104(c) matter, noting that while not included in the policies, they are referenced in the methods of implementation of those policies.

[85] In reply, Mr Sousa responding to Ms Buttimore's views on consistency of the application with the guidelines, noted that,

*In response, we have re-visited the guidelines and find that the outcomes sought in the guidelines are inherent in the rules of the District Plan in such matters as setback from the road and boundaries as well as assessment criteria. Of particular note in the guidelines are the following to which we have regard and consider the application to be consistent with.*⁷¹

[86] Mr Sousa went on to assess aspects of the guidelines as to; Allotment Placement, Allotment Size, Building Set-back, Neighbour, Building Appearance, Screening and Vegetation.⁷² In conclusion, Mr Sousa considered that, "... the review of the proposal against the design outcomes sought by the guidelines serves to more clearly show the compatibility of the proposed subdivision and its future outcomes with the rural environment sought by the Council as it has articulated in its rural guidelines."⁷³

[87] At this point I note that Ms Ongley, on behalf of the submitter, sought that I be provided with a full copy of the Guidelines. I addressed this matter in Minute #4 confirming that I had access to the full set of the Guidelines.

[88] Having reviewed the Guidelines and the assessment of Mr Sousa in reply, I find the Guidelines role is to steer subdivision and development towards the outcomes sought in the ODP. However, I observe that they the Guidelines are not a statutory document⁷⁴ and they are not a tick box assessment as to achieving the ODP outcomes.

Section 106

[89] Ms Buttimore and Mr Sousa were in agreement that there was no reason to decline the application under Section 106 of the RMA.⁷⁵ I heard no expert evidence to the contrary, so adopt that evidence.

PART 2 – RMA

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

⁷⁰ Section 42A Report, Ms L Buttimore, Para 64

⁷¹ Reply Statement, Mr P Sousa, Para 36

⁷² Reply Statement, Mr P Sousa, Para 36, Pages 11 - 14

⁷³ Reply Statement, Mr P Sousa, Para 37

⁷⁴ Rural Subdivision and Development – Design Guidelines, May 2012, Para 4, Page 4

⁷⁵ Section 42A Report, Ms L Buttimore, Para 98 and Evidence in Chief, Mr P Sousa, Para 78

- [91] In the decision (RJ Davidson Family Trust v Marlborough District Council [2018] NZCA 316, the Court of Appeal reconfirmed the pre-eminence of Part 2 matters in the consideration of resource consents. The Court however found that in those instances where it is clear that a planning document has been competently prepared having regard to Part 2 and contains a coherent set of policies leading toward clear environmental outcomes, consideration of Part 2 is unlikely to assist evaluation of a proposal. Conversely, where a plan has not been prepared in a manner which appropriately reflects Part 2, or the objectives and policies are pulling in different directions, consideration of Part 2 is both appropriate and necessary.
- [92] As to Part 2 matters, Ms Buttimore concluded that the proposal was inconsistent with some of the principles in Part 2, notably Section 7 c) and Section 7 f) as they relate to the maintenance and enhancement of rural character.⁷⁶ Mr Sousa set out his Part 2 assessment, concluding that the project is an efficient use of the Site, and provides for the social wellbeing of people through the provision of rural lifestyle choice, in a location that is close to social and commercial infrastructure; and that the project suitably avoids, remedies or mitigates adverse effects on the environment.⁷⁷
- [93] Mr Brophy, adopting the approach in RJ Davidson, considered that the ODP was complete and included a coherent set of policies and rules prepared under Part 2 and hence did not consider a further assessment under Part 2 necessary.⁷⁸
- [94] Full consideration of the ODP has been accorded and addressed earlier in the decision. I agree with Mr Brophy that the ODP adequately addresses the Part 2 matters that are particularly relevant to this application, and the proposal has been assessed against its requirements, and is inconsistent with them. There is no inherent conflict, invalidity, incompleteness or uncertainty, and accordingly further analysis under Part 2 is not considered necessary.
- [95] For completeness I have considered reasons set out in Ms Buttimore's and Mr Sousa's evidence identifying the relevant Part 2 provisions and am persuaded by the assessment of Ms Buttimore.

Conclusion and Decision

- [96] Acting under delegated authority pursuant to Section 34A, and Sections 104 and 104B of the Resource Management Act 1991, the application made by T and L Swan for Resource Consent (SUB19/47283) for a two (2) lot subdivision at 170 Ackworth Road, Lepperton, New Plymouth, is **refused**.
- [97] This decision is made for the reasons discussed throughout and, in summary, because:
- The activity that is **refused** is not consistent with the purpose and principles of the Resource Management Act 1991;
 - The activity that is **refused** is not consistent with the provisions of the operative and proposed New Plymouth District Plan; and
 - The activity that is **refused** is likely to have adverse effects on the environment.

⁷⁶ Section 42A Report, Ms L Buttimore, Para 99 - 100

⁷⁷ Evidence in Chief, Mr P Sousa, Para 88

⁷⁸ Evidence in Chief, Mr J Brophy, Para 72

DATED this 12th day of October 2019

A handwritten signature in black ink, appearing to be 'M. St. Clair', written in a cursive style.

Mark St.Clair (Independent Commissioner)

Appendix 1 – Minutes

**Directions/Minute of the Commissioner #1
SUB19/47283**

2 lot subdivision of Lot 1 DP 414901 at 170 Ackworth Road, Lepperton, New Plymouth.

Pursuant to section 34A of the Resource Management Act 1991 (RMA), independent commissioner Mark St.Clair has been appointed by New Plymouth District Council (NPDC) to hear and determine the application lodged by Mr Trevor Swan (the Applicant) for resource consent to undertake a 2 lot subdivision of Lot 1 DP 414901 – 170 Ackworth Road, Lepperton, New Plymouth.

The hearing is scheduled to commence at **9.00am Friday 11 September 2020** at the New Plymouth District Council offices (NPDC), in the Civic Centre, Plymouth Room, Ground Floor, Liardet Street, New Plymouth. At this stage the hearing is scheduled for one day. NPDC will separately issue a formal hearing notice to the parties.

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

Accordingly:

1. Pursuant to section 103B(2) of the RMA, the Commissioner directs that the NPDC section 42A report be provided to the parties, by way of email, no later than **3pm on Friday 21 August 2020**.
2. Pursuant to section 103B(3) of the RMA, the Commissioner directs that the Applicant is to provide written briefs of all their evidence to Ms Nadia Phillips, Hearings' Administrator at NPDC, by way of email, no later than **3pm on Friday 28 August 2020**.
3. The Commissioner requests that as soon as practicable following receipt of any such evidence received pursuant to Direction 2, NPDC provides a copy to all other parties to these proceedings by way of email.
4. Pursuant to section 103B(4) of the RMA, the Commissioner directs that if any person who has made a submission intends to present expert evidence at the hearing, including expert planning evidence, then that party is to provide a written brief of that expert evidence to Ms Nadia Phillips, Hearings' Administrator at NPDC, by way of email, no later than **3pm on Friday 4 September 2020**.
5. The Commissioner requests that as soon as practicable following receipt of any such evidence received pursuant to Direction 4, NPDC provides a copy to all other parties to these proceedings by way of email.
6. In terms of Directions 1, 2 and 4 the reports and evidence should be provided to NPDC electronically by email. Hard copies of the evidence should only be provided on request.
7. Pursuant to s41C(1) of the RMA, the Commissioner directs that in respect of expert evidence pre-circulated in accordance with these Directions, the hearing will be conducted in the following manner:
 - The section 42A report(s) will be taken as read;
 - The applicant that has provided the pre-circulated evidence is to call the witness in person;
 - The witness should be introduced and asked to confirm his or her qualifications and experience;

- The witness should be asked to confirm the matters of fact and opinion contained in the brief of evidence;
 - The witness will then be given an opportunity to draw to the attention of the Commissioner the key points in the brief. No new evidence shall be introduced, unless it is specifically in response to matters raised in other pre-circulated briefs of evidence supplied by another party – in such cases the new evidence shall be presented in written form as an Addendum to the primary brief of evidence and it may be verbally presented by the witness. If there is any variation between what the witness says and what is in the brief of evidence, the Commissioner will assume that the written brief is the evidence unless the content of the brief is specifically amended by the witness;
 - The witness may then be questioned by the Commissioner.
8. Non-expert evidence (including legal submissions) should be tabled and read aloud on the day that the relevant party appears at the hearing.
9. The hearing will be conducted in a manner which is appropriate and fair, but without unnecessary formality. Subject to adequate notice, the Commissioner will receive written or spoken evidence in Te Reo Māori. If any party wishes to present evidence in Te Reo Māori, they are requested to advise Ms Nadia Phillips Hearings' Administrator at NPDC, no later than **3pm on Friday 14 August 2020**.
10. The Commissioner also requests that all parties (the NPDC reporting officer and Trevor Swan as the applicant) calling expert witnesses liaise amongst themselves in order to facilitate their respective experts conferencing on matters relevant to their specific areas of expertise prior to the preparation of their reports or evidence (including any applicable conditions of consent) and through to the commencement of the hearing. The aim of the conferencing should be to identify areas of agreement and disagreement which can then be noted in the reports and evidence. The Commissioner will attempt to focus on the issues of contention during the hearing and in deliberations thereafter and so the assistance of the parties to clearly identify areas of expert agreement and disagreement in this manner will be greatly appreciated.
11. Any correspondence to the Commissioner should be directed through Ms Nadia Phillips, Hearings' Administrator at NPDC. Nadia.Phillips@npdc.govt.nz



Mark St.Clair
Independent Commissioner - Chair

Date 5 August 2019

**Directions/Minute of the Commissioner #2
SUB19/47283**

2 lot subdivision of Lot 1 DP 414901 at 170 Ackworth Road, Lepperton, New Plymouth.

1. On 5 August 2020 (incorrectly dated 5 August 2019), I issued Minute #1, which set out the scheduled hearing location, date, and time; the Section 103B of the Resource Management Act 1991 Section 42A Reporting and evidence pre-circulation timetable, and the manner in which the hearing was to be conducted. These directions remain in place.
2. I also requested that all parties calling expert witnesses, liaise amongst themselves in order to facilitate their respective experts conferencing on matters relevant to their specific areas of expertise. Somewhat unusually, this has generated some queries (see attached) from the parties as to the conferencing and when it should occur, as well as other matters.
3. I understand that the Applicant, the Council, and the Submitter, have all engaged landscape and planning experts. To address the issue as to when the conferencing is to occur and as to the manner in which it is to be conducted, I request that conferencing between the landscape experts be conducted separately to and before, the conferencing by the planners. In addition, I request that the conferencing occur after the pre-circulation of the Section 42A Report/s and all Applicant and Submitter expert evidence, that being after 4 September 2020 and before the commencement of the hearing on 11 September 2020. Any resulting Joint Witness Statement (JWS) from the respective conferencing sessions should be provided to Ms Nadia Phillips, Hearings' Administrator at NPDC, by way of email, and that as soon as practicable, NPDC provides a copy of the JWSs to all parties to these proceedings by way of email.
4. I would direct the parties and experts to the Environment Court Practice Note 2014, Appendix 3 which clearly sets out the relevant matters as to expert conferencing.
5. As to the question about evidence being prepared on only those matters in contention, that is a matter for the party or expert. The purpose of Item 10 in Minute #1 was to indicate what I will attempt to focus on at the hearing rather than what any evidence should address. I would observe that it would be difficult to know what the matters of contention would be, prior to the pre-circulation of the Section 42A report/s and evidence.
6. Any correspondence to the Commissioner should be directed through Ms Nadia Phillips, Hearings' Administrator at NPDC. Nadia.Phillips@npdc.govt.nz



Mark St.Clair
Independent Commissioner - Chair

Date 14 August 2020

Questions from parties

From Applicant's Planner (Paul Sousa – Juffermans Surveyors Ltd)

Is the Commissioner happy with evidence to be prepared on only those matters in contention? (*i.e. if everyone agrees there are no traffic issues, servicing issues etc, that evidence of any type need not be prepared on these matters/issues and that the information in the application can be relied upon.*)

From the Submitter's Planner (Jeremy Brophy – BTW)

1. Whether only NPDC and the applicant will complete conferencing? Para 10 doesn't refer to submitter experts, but does say 'all parties'.
2. Whether the Commissioner wants experts to conference separately, or whether he would be fine for the planning and landscape experts to conference together? In my experience is it normal for experts to conference separately, with landscape first.
3. In discussions with Sarah Ongley (submitters legal counsel), it makes more sense (and is normal process) to conference the week leading up to the hearing, rather than prior to evidence being prepared and circulated. We would like to query with the commissioner whether this is possible? It would provide the experts time to work through their written evidence, which would set the scene for conferencing to follow.

**Directions/Minute of the Commissioner #3
SUB19/47283**

2 lot subdivision of Lot 1 DP 414901 at 170 Ackworth Road, Lepperton, New Plymouth.

1. The hearing commenced on Friday 11 September 2020. I adjourned the hearing at 3.55pm to provide the Applicant time in which to prepare their reply statement. By way of explanation, the Applicant's reply is the opportunity for the Applicant to respond to matters raised in the hearing, but not to introduce new evidence.
2. As I explained at the hearing, the Applicant's reply is to be filed with Ms Julie Straka, Hearings' Administrator at New Plymouth District Council (NPDC), by way of email, by **4pm on Thursday 17th September 2020**. As soon as practicable, NPDC must provide a copy of the Reply Statement to all parties to these proceedings by way of email.
3. Once I receive the right of reply, I will decide if I have all the information I require. Having determined that, I will then close the hearing by way of a minute. I do not propose to reconvene the hearing.
4. Any correspondence to the Commissioner should be directed through Ms Julie Straka, Hearings' Administrator at NPDC. Julie.Straka@npdc.govt.nz



Mark St.Clair
Independent Commissioner - Chair

Date 14 September 2020

**Directions/Minute of the Commissioner #4
SUB19/47283**

2 lot subdivision of Lot 1 DP 414901 at 170 Ackworth Road, Lepperton, New Plymouth.

1. In Minute #3, I set out the timetable for the Applicant to provide their reply statement which was by **4pm on Thursday 17th September 2020**. The reply statement was duly filed in accordance with that timeframe and a copy of the reply statement was distributed to the parties.
2. I also received, via the Hearing Administrator, correspondence from Ms Ongley as counsel for the submitter Mrs Butterworth, requesting that I be provided with access to a full copy of the Rural Subdivision and Development Guidelines. In the same manner that I have been provided with access to the operative and proposed District Plan, I confirm that I have access to the Rural Subdivision and Development Guidelines. Having reviewed the reply statement, and the other material presented at the hearing, I consider that I have all the information I require. I therefore close the hearing as at today's date, **Monday 21st September 2020**.
3. I will now proceed to my deliberations and preparation of the decision. In accordance with section 115(2) of the Resource Management Act 1991, the decision will be given to the parties on or before 15 working days from the close of the hearing, which is **Monday 12th October 2020**.
4. Any correspondence to the Commissioner should be directed through Ms Julie Straka, Hearings' Administrator at NPDC. Julie.Straka@npdc.govt.nz



Mark St.Clair
Independent Commissioner - Chair

Date 21 September 2020