

BEFORE THE NEW PLYMOUTH DISTRICT COUNCIL
INDEPENDENT HEARINGS COMMISSIONER

IN THE MATTER OF

the Resource Management Act 1991
(‘the Act’)

AND

IN THE MATTER

of an application under section 88 of
the Act lodged by Trevor Swan to
undertake a two Lot subdivision of the
property at 170 Ackworth Road,
Lepperton.

STATEMENT OF PLANNING EVIDENCE OF JEREMY JOSEPH BROPHY

(On behalf of the submitter)

4 September 2020

INTRODUCTION

1. My name is Jeremy Joseph Brophy. I hold the position of Manager Planning at the New Plymouth based Resource Management Consultancy BTW Company Limited (BTW). I have been a practicing planner for the past 14 years. Half of this time has been based in New Plymouth predominantly working with the Operative New Plymouth District Plan 2005 (ODP).

Qualifications and Experience

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 since 2012. I am a certified Commissioner (panel certification) under the Ministry for the Environment's Making Good Decisions programme.
3. My experience includes planning practice in both local government and private consultancy, processing and preparing resource consent applications. Examples of relevant projects include numerous applications for rural, residential and commercial subdivision predominantly in the Wellington, Waikato and Taranaki Regions.
4. I am experienced in leading multidisciplinary project teams for a wide range of development projects. In my role as Manager Planning at BTW I regularly assist my team in developing mitigation measures to reach positive outcomes for our clients and potentially affected parties alike.
5. I have also processed many subdivision and land use consent applications under the ODP in my role as a contractor to the New Plymouth District Council (Council). This experience has provided me with an excellent knowledge of the provisions and intent of the ODP.
6. I have had the following specific involvement with respect to the matters currently in front of Council:
 - a. I was appointed by Ms Colleen Butterworth on 24 March 2020 to provide planning advice and expert evidence with regard to subdivision resource consent application SUB19/47283.
 - b. I have visited the application site and surrounding neighbourhood twice in relation to this application, most recently on 12 June 2020.

Expert Witness Code of Conduct

7. I confirm that I have read, and agree to comply with, the Environment Court's Code of Conduct for Expert Witnesses (Environment Court of New Zealand Practice Note 2014). This evidence I am presenting is within my area of my expertise, except where I state that I am relying on the evidence of another person. To the best of my knowledge I have not omitted to consider any material facts known to me that might alter or detract from the opinions I express.

Scope of Evidence

8. The purpose of my evidence is to provide a planning assessment of the applicant's proposal.
9. In my evidence I will comment on:
 - a. The site and receiving environment.
 - b. The proposal.
 - c. The submission in opposition.
 - d. Statutory requirements.
 - e. Consent conditions.
 - f. RMA assessments conclusions.
10. In preparing this evidence I have reviewed the following:
 - a. The resource consent application and assessment of environmental effects (AEE) prepared by Juffermans Surveyors Limited, dated 18 April 2019.
 - b. The submission lodged by Ms Butterworth.
 - c. The Processing Planners' section 42a report (Officer's Report) prepared by Ms Laura Buttimore dated 21 August 2020.
 - d. Visual and landscape assessment and evidence of Ms Erin Griffith.
 - e. Visual and landscape assessment (LVIA) and evidence of Mr Richard Bain.
 - f. Planning evidence of Mr Paul Sousa.
 - g. Visual and landscape evidence of Ms Martha Dravitzki.
11. Where relevant, I will reference the Officer's Report which has been pre-circulated and provides a comprehensive summary of relevant matters.
12. Expert evidence pre-circulated by the applicant for planning and landscape will also be referenced where relevant.

SITE AND RECEIVING ENVIRONMENT

13. The site and existing environment are generally well described in section 3 to 6 of the Officer's Report and in section 1 of the AEE, I do not intend to repeat this information.
14. The characterisation of landform within Figure 1 of Mr Sousa's evidence is useful to understand the application site. Although, I consider Area 1 as being 'steep grazing land' (with interspersed stands of trees). Area 2 is also currently used as grazing. I assume that the reference to an orchard is a future proposed use.

THE PROPOSAL

15. I agree with the Officer's Report that overall the proposal should be assessed as a discretionary activity.
16. Subdivision rules that consent is required for under the ODP include Rur78 (minimum Lot size), Rur79 (practicable vehicular access), Rur81 (water, stormwater and sewer connections), Rur82 (building platform), Rur83 (existing buildings in relation to subdivision boundaries) and Rur84 (financial contributions).
17. I do not intend to give a description of the proposal in my evidence as it is well described in the sections 7 to 11 of the Officer's Report. The proposal is also described in section 2 of the AEE, with subsequent amendments being pre-circulated by the applicant within the planning and landscape evidence.
18. Since the original AEE was lodged with Council, the applicant has made a number of changes to the proposal. The main changes include:
 - a. Removal of the barberry hedge (originally identified to be retained). This hedge has been replaced with a griselinia planting that is intended to form a hedge in the future.
 - b. Each proposed Lot has been limited to one habitable dwelling.
 - c. Removal of the 4m high by 4m wide shelter belt that was proposed along the southern boundary of Proposed Lot 2.
 - d. No vehicle access point to be formed, adjoining Ackworth Road, within 30m of the southern boundary on proposed Lot 2.
19. As a matter of completeness, the final suite of mitigation measures proposed by the applicant are summarised, below:
 - a. Lots 1 and 2 shall be limited to one habitable building per Lot.

- b. Any dwellings on Lot 2 shall have colour controls put in place on the walls and roof ensuring that the colours of the dwelling is below 37% light reflectance value.
 - c. Driveways and entranceway materials are to be rural in character (no bright concrete).
 - d. All boundary materials are to be rural in character (no urban style solid fences or entry enhancements).
 - e. Only one entry point (other than a type F) is permitted onto the road per allotment.
 - f. At 'Area A', adjoining Lot 2, a 1m wide hedgerow shall be planted to soften the visual impact of buildings.
 - g. Side boundary fences for proposed Lot 2 are to be rural in design. No closed boarded fences.
20. I note that an indicative 'rural entrance' has been identified in Ms Dravitzki's evidence, in Figure 4. This location appears to create a non-compliance with the 160m sight visibility requirement in the ODP (Rur93 vehicle access point). This is because the vehicle access point needs to be located more than 10m to the north of the access to 193 Ackworth Road. This further separation pushes the access point north whereby existing trees located in proposed Lot 1 will likely obstruct views north towards the bend in the road. Ms Dravitzki's evidence also proposes a 30m section of proposed Lot 2 frontage where a vehicle access point cannot be established. Clarification is sought on whether a compliant vehicle access point can be provided.

SUBMISSION IN OPPOSITION

21. Ms Butterworth's submission seeks that the subdivision consent application be declined in the current location, stating *"I will be severely adversely affected by any buildings or tree plantings, if consent is given for the proposed location of Lot 2, ... I request that an alternative site for Lot 2 subdivision be sought from within the current Lot 1 proposal, so as to maintain the rural character of my property and surrounding area"*.
22. The submission disagrees with a number of statements and observations made within the AEE. These include:
- a. Page 14 of the AEE asserts that the occupants of 198 Ackworth Road will maintain a rural outlook, due to the expanse of the large Lot located directly to the west. The submission (point 3) states that there is no 'rural outlook' to the west due to the dense hedging along west and south boundaries, against prevailing winds.
 - b. The original AEE included a 4m high and 4m wide evergreen shelterbelt hedge that would be planted along the southern boundary of the proposed Lot 2. The submission points out that this hedging (as originally proposed) would have completely

screened the existing rural outlook when viewed from 198 Ackworth Road.

STATUTORY REQUIREMENTS

Section 104 of the Act

23. As a discretionary activity, the proposal must be considered pursuant to section 104 and 104B of the Act. As a result of recent case law, I consider it unnecessary to complete an assessment of Part 2 of the Act (paragraphs 58-60 provide more detail on my view in this regard).

The Permitted Baseline

24. One matter that needs consideration is the permitted baseline. The use of the word 'may' in section 104(2), means that consideration of the permitted baseline is not mandatory. Whether it is applicable or not is to be assessed on a case by case basis.
25. The permitted baseline has been outlined within both Ms Buttimore's and Mr Sousa's evidence. I agree with both briefs of evidence that a dwelling cannot be established as a permitted activity on land identified as proposed Lot 2. I also agree that application of the permitted baseline does not apply to subdivision, as every subdivision in the New Plymouth District requires resource consent.
26. The permitted baseline for an 'other building' has also been described by Mr Sousa and Ms Buttimore, as potentially including a shed or non-habitable building that could be established within 10m of the boundary adjacent to 198 Ackworth Road, to a height of 10m without requiring a resource consent. A building as described would potentially screen some or all of the current views north of the 198 Ackworth Road property.
27. I concur with Ms Buttimore's assessment that construction of such a shed or non-habitable building in this location is fanciful. The reasons for this are as follows:
- a. A large farm shed is currently positioned in the south eastern corner of proposed Lot 1. The existing shed is a regularly found design in rural areas, clad with corrugated iron, positioned directly adjoining the road (avoiding unnecessary removal of grazing land).
 - b. Ancillary buildings are typically located near the existing habitable buildings or other farming relating sheds (e.g. dairy milking sheds) on rural properties for ease of access and to provide passive surveillance as security. It is considered most likely that without there being a dwelling on proposed Lot 2, construction of other sheds and buildings would be unlikely.

28. The permitted baseline in how it relates to planting of trees and vegetation has also been traversed in Mr Sousa and Ms Buttimore's evidence. I concur with Mr Sousa and Ms Buttimore's evidence that vegetation could be established in the paddock area currently proposed as Lot 2 as a permitted activity. (I understand Ms Ongley intends to address this matter further in legal submissions.)
29. Planting of vegetation would not be considered fanciful and this planting could impact on views from 198 Ackworth Road. However, the visual effects of vegetation planting are considered to be very different to that of a habitable building, with water tanks and ancillary buildings, vehicle access and residential scale gardens. In this respect I agree with Ms Buttimore's conclusion in paragraph 43 of her evidence that permitted vegetation would not result in comparable effects to the proposed two lot subdivision and the development rights that would be enabled on proposed Lot 2.
30. In summary, 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.

SUMMARY OF POTENTIAL ADVERSE EFFECTS

31. I concur with the Officer's Report in terms of relevant matters for assessment. In my opinion, the relevant actual and potential effects on the environment for consideration relate to:
 - a. Rural character.
 - b. Rural amenity values (including: visual effects resulting from the proposed building platform, traffic generation visual effects, noise and light spill).
 - c. Cumulative effects.
32. Given that the written approval has been provided by all other adjoining property owners and occupiers, my evidence focuses on the potential effects on 198 Ackworth Road. In the context of Section 104 of the Act, this property forms part of the environment that is to be considered.
33. Where relevant I have relied on the expert view of others, to assist in forming a view on whether the level of effects are acceptable.

Effects on Rural Character

34. The ODP provides an important frame of reference in the Management Strategy (page 26a) that identifies seven key elements that distinguish the rural environment. These elements include:
 - a. Spaciousness
 - b. Low density
 - c. Vegetated
 - d. Production orientated
 - e. Working environment
 - f. Rural based infrastructure
 - g. Rural infrastructure.

35. In my opinion the proposed subdivision does not provide for the fundamental characteristics of the rural environment being a spacious, low density and vegetated environment. When viewed from the dwelling at 198 Ackworth Road the subdivision (including recent amendments identified in Ms Dravitzki's evidence) provides little relief to avoid or mitigate adverse effects on rural character as a result of the dwelling and ancillary buildings that would be enabled.

36. Contextually I concur with Mr Bain's evidence that the Ackworth Road area directly surrounding the application site includes a number of other lifestyle properties. On reviewing aerial images, my observation is that lifestyle properties in the area predominantly enjoy an open, rural outlook with living areas from habitable buildings typically opening out to the north and north west. I consider this open, rural outlook with northerly aspect to be a fundamental contributor to rural character values in the surrounding area.

37. Whilst there are a higher number of lifestyle properties located on Ackworth Road, it is my opinion that rural characteristics such as spaciousness (which in turn inherently results a visually lower density) have been maintained. Dwellings being well separated and orientated so that they are not visually overbearing, with particular regard to northerly aspect would assist in enabling this rural character to be maintained.

38. The presence of a proportionally higher number of lifestyle properties alone is not sufficient for a rural-residential subdivision as proposed to be approved. Neither does this mean that the rural elements described in the ODP Management Strategy have any less importance. The configuration of proposed lifestyle properties (including building platforms/controls, access and landscape planting) is critical in ensuring that adverse effects on existing residential uses within this rural landscape are avoided, or mitigated to an acceptable level.

39. The applicant has offered up a suite of mitigation measures. I concur with Mr Bain's evidence in paragraph 34 in that the majority of these proposed measures do not mitigate the effects that would be experienced by the owners of 198 Ackworth Road. Whilst they will be useful in mitigating potential visual effects when viewed from the wider receiving environment by limiting building reflectivity, and restricting fence treatments to typical rural designs, the mitigation measures lack focus on the main issues raised in Ms Butterworth's submission.
40. Ms Dravitzki's assessment finds the benefits of having a building platform on proposed Lot 2 setback from the road in mitigating the visual effect of public viewpoints and increased amenity for the likely future dwelling, outweighs the potential adverse effect on 198 Ackworth Road. I concur with Mr Bain that the approval of this resource consent should not hinge on a weighting between public versus privately experienced effects as Ms Dravitzki has suggested. Expert landscape and planning evidence must assess whether the actual and potential effects on 198 Ackworth Road have been effectively avoided or mitigated.
41. The Management Strategy provides commentary on minimum Lot size, and the intent for considering discretionary subdivision applications. As described below (underline my emphasis) identification of appropriate building platforms and management of land has been specifically identified.
- "A minimum ALLOTMENT size of 4000m² applies for restricted discretionary activities, while no minimum size requirement has been set for full discretionary subdivision. This allows greater flexibility for discretionary applications acknowledging that a higher level of assessment will be undertaken. The identification of appropriate building platforms and management of land subject to subdivision will be particularly relevant to maintaining RURAL CHARACTER (page 261 of the District Plan, Management Strategy).*
42. In my opinion the applicant has not identified an appropriate building platform for proposed Lot 2. There are opportunities to avoid or mitigate effects on 198 Ackworth Road by positioning the building platform closer to the road frontage and protecting an open viewshaft as identified in the LVIA attached to Mr Bain's evidence.

Effects on Rural Amenity Values

Visual Building Bulk and Residential Activity – Subdivision Building Platform

43. The proposed subdivision (if granted) would create an entitlement for a habitable building and ancillary buildings to be established on proposed Lot 2. The land that comprises Lot 2 is currently used for dry stock grazing,

the majority of the area is flat and provides a sense of openness that is rural in nature when viewed from the dwelling at 198 Ackworth Road.

44. The building platform that would result from creation of proposed Lot 2 for a future dwelling is located 30m from the front boundary and 15m from each side boundary. The building platform would be located directly in line with the predominant north facing viewshaft from the dwelling at 198 Ackworth Road as identified in the Bluemarble LVIA, attached to Mr Bain's landscape evidence. As described above paragraph 42 the ODP is very clear in that identification of appropriate building platforms and management of land are particularly relevant in assessing discretionary activity subdivisions.
45. The viewshaft comprises of a number of aspects that cumulatively encompass the amenity values held by Ms Butterworth. Amenity as defined in the RMA means "*those natural or physical qualities and characteristics of an area that contribute to people's appreciation of its pleasantness, aesthetic coherence...*". Ms Butterworth's property currently enjoys rural views to the north across the open paddock, with stock grazing and glimpses of the coast in the distance through the mature pine trees (refer to Annexure 1 which identifies the views through the pines).
46. As outlined by Mr Bain and Ms Griffith's evidence, the applicant has not provided a considered analysis of the effects on the owner of 198 Ackworth Road. Other than the opinion of Mr Sousa and Ms Dravitzki that the permitted baseline to establish an 'other building' to the north of Ms Butterworth's property is a non-fanciful activity; the applicant's assessment has focused on the wider environment with particular focus provided to further mitigation of public views from the Ackworth Road frontage.
47. Mr Bain's evidence considers that the Ackworth Road environment has "*undergone significant transition to lifestyle properties*" and that this scale of subdivision as proposed (adding one habitable building) can be accommodated. However, the proposed configuration of proposed Lot 2 does not effectively address adverse effects on the amenity values of 198 Ackworth Road. Mr Bain is of the view that the subdivision scheme would result in "significant adverse effects' that will change the outlook from 198 Ackworth Road from being rural in nature to a more enclosed urban feel.
48. The proposal as it stands in terms of building platform location, has not changed from the original AEE lodged in April 2019. Whilst additional mitigation measures in the form of building height limitations, maximum reflectivity and additional landscape planting have been offered up by the applicant, adverse effects on amenity values for the owner of 198 Ackworth Road remain.

49. I concur with Mr Bain's view (in paragraph 35 of his evidence) that mitigation needs to consider the currently rural outlook for 198 Ackworth Road. The Bluemarble Layout plan prepared by Mr Bain would address this outstanding issue. This layout plan has similarities to the layout plan included in Ms Griffith's evidence, in providing for openness which in turn results in a sense of lower density of development when viewed from 198 Ackworth Road (consistent with the existing environment and rural amenity outcomes anticipated under the District Plan framework). I also agree with the suite of mitigation measures outlined in paragraph 36 of Mr Bain's evidence, as resulting in both acceptable effects to the wider receiving environment and the owner of 198 Ackworth Road.

Cumulative Effects

50. As outlined in paragraph 72 to 75 of the Officers Report, development of a dwelling on proposed Lot 2 would be viewed in combination with a number of other habitable buildings that have been constructed on lifestyle properties nearby. The most recent, as identified in Mr Sousa's evidence, located at 193 Ackworth Road.
51. In my view the proposal has the potential to create unacceptable cumulative effects on the environment. Given that proposed Lot 2 will be the fifth Lot taken from the parent title, it is clear that the level of subdivision and lifestyle Lot creation (in conjunction with other subdivision within the Ackworth Road environment) has over time created this change in character towards a lifestyle character near the road frontage.
52. As it stands the proposed subdivision includes mitigation planting adjoining Ackworth Road, and a number of other trees and ornamentals to be planted in behind this boundary hedge. Once mature this planting will provide softening of views towards a dwelling no higher than 5.5m in height. This planting will assist in mitigating potential visual effects when viewed from the road frontage.
53. On balance, I consider that whilst the proposal would compromise rural character when viewed from 198 Ackworth Road it will not result in unacceptable *cumulative* effects on the owner of 198 Ackworth Road. Given that the proposed habitable building platform (when viewed to the north west of the dwelling at 198 Ackworth Road) would not be viewed directly in context with other dwellings.

Conclusion on Assessment of Effects

54. Overall, the proposal does not mitigate actual and potential adverse effects on the environment to an acceptable level.

55. For the reasons outlined above, in my opinion the potential adverse effects on rural character will be significant on the owner of 198 Ackworth Road. Based upon the conditions proposed by the applicant, the proposal is not able to effectively mitigate visual building bulk and effects on rural amenity values

THE OBJECTIVES AND POLICIES OF THE OPERATIVE DISTRICT PLAN

56. The ODP contains objectives and policies that generally relate back to 'effects', as a result of the effects-based framework.
57. My assessment of the relevant objectives and policies of the ODP follows below. I have focused on the relevant provisions of the ODP that all broadly relate to managing effects on rural character and amenity and traffic. Where relevant submission points have also been discussed.
58. Objective 4 includes clear wording (underline my emphasis added), that is "*to ensure the subdivision, use and development of land maintains the elements of rural character*". In my opinion the subdivision will not maintain the elements of rural character for the owner of 198 Ackworth Road. Proposed Lot 2 will introduce a habitable building and ancillary buildings that, as Mr Bain describes, is more akin to an enclosed urban environment. I agree with his conclusion, when considering proximity to 198 Ackworth Road.
59. The ODP continues to use clear language in determining appropriateness of subdivision within Policy 4.1 which relates to a controlled scale subdivision, which is to (again emphasis my emphasis added) "*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*". The policy relates to a controlled activity subdivision outcomes and is not considered to be relevant to this subdivision proposal for a discretionary activity. However, the themes outlined in the policy reflect the 'meaning' of Rural Character (paragraph 34 of my evidence) and are carried through the following policy framework.
60. In my assessment of Policy 4.2(a) to (i), I concur with the conclusions of the Officers Report. Specifically, Policy 4.2(b) continues to prescribe that subdivision shall be "*of such a scale and intensity of use that is typical of a rural environment and not of any urban or lifestyle area*". As described above, I consider the proposed layout of Lot 2 to be characteristic of an lifestyle area. In my view, the proposal is therefore contrary to this policy.
61. The policy framework provides a clear direction under Policy 4.5 to ensure that the design of subdivision and development is sensitive to the

surrounding environment. A number of design principles are identified where the proposed subdivision is considered to be contrary to these policies.

62. Policy 4.5(a) states: *“Ensure appropriate overall density by maintaining the level of built form expected in the rural environment”*. The policy reflects a common theme of maintaining low density-built form in the rural environment. As described earlier, in my opinion the proposal does not represent a low density of residential use, when viewed from 198 Ackworth Road. In addition, policy 4.5(b) includes a similar policy direction, to *“Ensure the intensity and scale of the development is in keeping with rural character”*. In my view, the proposal is contrary to this policy.
63. I consider the proposal’s generic visual mitigation package has a focus on viewing the site from the wider receiving environment. In Policy 4.5(d), with respect to integrating with the surrounding environment with minimal disturbance to landform, use of materials that are in keeping with the environment including consideration of reflectivity the proposal is consistent with the Policy. Visual softening is provided along boundary elements with landscape planting (although with a focus to the public viewpoint on Ackworth Road). In my opinion the proposal is partly consistent with this Policy.
64. I consider the proposal to be consistent with policy 4.8 in that the introduction of one dwelling would give rise to a relatively low increase in traffic on Ackworth Road.

THE OBJECTIVES AND POLICIES OF THE PROPOSED DISTRICT PLAN

65. I agree with the objectives and policies listed in the Officer’s Report with regard to the Proposed District Plan (PDP). Objectives SUB-01 of the PDP are of relevance to this proposal and include a similar theme to the ODP regarding compatibility with the role, function and predominant character of each zone. Objective SUB-02 focuses on subdivision design, to avoid or mitigate adverse effects on the environment.
66. RPROZ-04 extends the characterisation of rural character within the ODP, including referring to extensive areas of vegetation, low density rural living (for example farmhouses and workers cottages), a range of noises, smells, light overspill and traffic.
67. Policy RPROZ-P3 seeks to:

“Avoid activities that are incompatible with role, function and predominant character of the Rural Production Zone and/or activities that will result in:

1. reverse sensitivity effects and/or conflict with permitted activities in the zone; or
2. adverse effects, which cannot be avoided, or appropriately remedied or mitigated, on:
 - a. rural character and amenity values;
 - b. the productive potential of highly productive soils and versatile rural land. Incompatible activities include:
 1. residential activities (except papakāinga) and rural lifestyle living that are not ancillary to rural activities;
 2. retirement villages;
 3. visitor accommodation;
 4. supermarkets;
 5. integrated retail activities;
 6. large format retail activities; and
 7. educational facilities (except Kōhanga reo).

68. With regard to adverse effects, which cannot be avoided, or appropriately remediated or mitigated on rural character and amenity values – these activities that are incompatible with the role, function and predominant character or the Rural production Zone and must be avoided. As outlined earlier in this evidence, in my view the adverse effects have not been appropriately mitigated on rural character and amenity values. The ‘avoid’ language provides strong policy direction.

Objectives and Policies Summary

69. In my opinion, the proposal is overall contrary with the framework of the ODP and the PDP and its relevant objectives and policies.

PART 2 OF THE ACT

70. The Court of Appeal in *R J Davidson*¹ has re-established the requirement for consent authorities to consider Part 2 when assessing an application for resource consent, in limited circumstances.

71. In circumstances where it is clear that a plan is “*prepared having regard to pt 2 and with a coherent set of policies designed to achieve clear environmental outcomes, the result of a genuine process that has regard to those policies in accordance with s 104(1) should be to implement those policies in evaluating a resource consent application*” and reference to Pt 2 “*would not add anything*”, and further “*could not justify an outcome contrary to the thrust of the policies*”.²

¹ *RJ Davidson Family Trust v Marlborough District Council* [2018] NZCA 316.

² Above-cited at [74].

72. In this instance the ODP is considered to be complete and includes a coherent set of policies and rules prepared under Part 2 of the Act. Therefore I do not consider further assessment of Part 2 is necessary.

DRAFT CONSENT CONDITIONS

73. I have reviewed the draft consent conditions proposed in the Officer's Report and are generally in agreement with these conditions.
74. One fundamental addition that I believe should be included is specific reference to a future dwelling building platform, to provide certainty as to what the visual outcome would be if subdivision is granted. Currently the scheme plan seeks a broad building platform that is created with regard to the permitted yard setback rules. The platform would create a permitted buildable area (for a dwelling and other buildings) of more than 1,000m² on proposed Lot 2.
75. However, the following amendments are suggested:
- a. Condition 7 – With a restriction on vehicle access points being established within 30m of proposed Lot 2, I believe the applicant needs to identify the proposed vehicle access point now. The condition should then relate to establishment of the proposed vehicle access point (noting the potential issue with compliance with Rur93).
 - b. Condition 9(c) – It is considered appropriate for a maximum height of 5.5m to be applied to all buildings on proposed Lot 2. This is supported by Mr Bain's evidence. Exceedances for gable roof forms up to 6m in height are considered to be reasonable. The suggestion by Mr Sousa to make reference to 'existing ground level as existed at time of subdivision' is supported.
 - c. Condition 9(j) – The suggestion by Mr Sousa in his evidence, that the conditions relates to 'along the boundaries of Lot 2' is supported and considered reasonable.
 - d. Condition 9(i) – Regarding sediment and erosion control is supported.
 - e. Condition 10(b) – Suggested that the condition be amended to use the terminology 'vehicle access point' as it relates to the ODP definitions.

76. Overall, with the suggested amendments I consider that draft conditions are reasonable and generally appropriate should the Commissioner be of a mind to grant consent.

RMA ASSESSMENT CONCLUSION

77. In my opinion the applicant's proposal will result in significant adverse effects on the amenity values of the owner of 198 Ackworth Road, and adversely affect the rural character experienced at that location.
78. The proposal does not avoid or mitigate the actual and potential adverse effects through measures offered up by the applicant, to be secured as conditions of consent. Expert landscape evidence has been provided by Mr Bain and Ms Griffith that considers that the proposal does not provide sufficient mitigation.
79. I concur with the Officer's Report that the proposal is contrary to the relevant objectives and policies of the ODP and the PDP for the reasons I have provided.
80. Taking into account all the matters raised, including the concerns of submitters, I consider that the weight of the matters I have addressed under section 104(1) falls on the side of declining the application.
81. I support the Officer's Report which recommends that the proposal be declined.

A handwritten signature in black ink, appearing to read 'J. Brophy', with a large loop at the beginning and a vertical line extending downwards from the end.

Jeremy Joseph Brophy
4 September 2020

Annexure 1 – View across the paddock from first floor towards and through the pine trees

