

## SECTION 42A HEARINGS REPORT

### RESOURCE CONSENT APPLICATION FOR A DISCRETIONARY SUBDIVISION AT 170 ACKWORTH ROAD, NEW PLYMOUTH APPLICATION NO. SUB19/47283

Hearing Date: 11<sup>th</sup> September 2020

Report prepared by: Laura Buttimore, Consultant Planner

<b>Consent No:</b>	SUB19/47283
<b>Applicant:</b>	T and L Swan
<b>Site Address:</b>	170 Ackworth Road, New Plymouth
<b>Legal Description:</b>	Lot 1 DP 414901 held in RT 456307
<b>Site Area:</b>	4.78 ha more or less
<b>Application:</b>	2 lot subdivision
<b>Zoning:</b>	Operative District Plan: Rural Environment Area Proposed District Plan: Rural Production Zone
<b>Overlays:</b>	N/A
<b>Relevant Rules:</b>	Rules Rur 78 - 83
<b>Application status:</b>	<i>Subdivision</i> The Proposal is Discretionary Activity under Rules Rur78 and Rur83 of the New Plymouth District Plan (Operative 15 August 2005).
<b>Notification:</b>	The application was limited notified to the owner at 198 Ackworth Road on the 21 <sup>st</sup> of December 2019.
<b>Submission:</b>	A submission was received in opposition to the proposal by the owner of 198 Ackworth Road,

being Colleen Butterworth on the 7<sup>th</sup> of  
February 2020.

I, Laura Buttimore, Consultant Planner acting for the New Plymouth District Council (NPDC) have written this hearing report. It has been prepared to assist the Independent Hearings Commissioner in his consideration of the application. The report has no status other than as a hearing report on the application. It is not a decision, and the recommendation should not be construed as such.

### **Statement of Experience**

1. I hold the qualifications of a Bachelor of Resource and Environmental Planning (Honours) from Massey University. I am a Full Member of the New Zealand Planning Institute.
2. I have over eleven years' experience as a planner working in local authority and private consultancy across New Zealand. Over this time, I have prepared and processed a variety of resource consents and notices of requirement, as well as preparing and presenting at Council hearings and the Environment Court. This experience has included processing a large number of rural subdivision resource consents for NPDC in recent years. My experience also includes recent work on the drafting of the New Plymouth Proposed District Plan and reviewing and summarising of the Rural Production Zone submissions.

### **Site Description and surrounding environment**

3. The subject site is comprised in one Record of Title (RT) on Ackworth Road. The site is 4.7830ha in area and contains a dwelling with associated accessory buildings and curtilage on the western side of Ackworth Road. An existing vehicle access point onto the road serves the dwelling and accessory buildings located near the dwelling in the centre of the site. Landscaping has been undertaken around the existing dwelling and along the front road boundary.
4. A well-established Barberry hedge (see Photo 1 below) demarcating the southern extent of road boundary of the site has been recently removed and replaced by Pittosporum shrubs, intended for establishment as a hedge (see Photo 2 below).
5. The remainder of the site is used for the grazing of dry stock. Photo 3 views the entire site from the west off Richmond Road and identifies the topography of the site sloping away to the west from Ackworth Road and the established vegetation on site. A stand of tall trees (Pine and Macrocarpa) is located in the north western corner of Lot 2, extending into the south western corner of Lot 1. The northern section of the stand of trees includes some regenerating native vegetation.

6. In the immediate environment there is a mixture of lifestyle properties and smaller country living sized lots and beyond that there are a number of large farm holdings.



Photo 1: Road frontage showing road boundary vegetation at the time of consent lodgement. (Source: Application for Resource Consent)



Photo 2: View over area of Propsoed Lot 2 from Ackworth Road with hedge removed and new hedge planted. (Source: L Buttimore, Site Visit 9/07/2020).



Photo 3: View of the site from the west, dwelling on Lot 1 at the left, Proposed Lot 2 immediately right of stand of pine trees in centre of photo (photo taken from Richmond Road). (Source: Application for Resource Consent).



Figure 1: Site and Surrounding Area

## **Proposal**

7. The applicant proposes to undertake a subdivision as follows:
  - Lot 1 – 4.27ha containing the existing dwelling.
  - Lot 2 – 4130m<sup>2</sup> vacant allotment.
  
8. The proposal is outlined in section 2 of the application. Lot 1 will utilise the existing access point established to service the existing dwelling. Proposed vehicular access to Lot 2 is described in section 2 as follows:

*Lot 2 has frontage of approximately 69m along Ackworth Road. There is an existing break in the dense 3.5m – 4m high hedge toward the southern end of this frontage for an existing gate, which could be upgraded and serve as the access point to this proposed Lot thereby retaining the character of the existing road frontage.*

9. It is not proposed that this location be definitive for access to Lot 2 and given the hedge has now been removed and new planting undertaken it is unclear where the new vehicle access is proposed.
10. Lot 1 will retain its existing on-site services which include wastewater disposal to septic tank, roof tank collection for water and stormwater to soak holes. Any dwelling on Lot 2 is likely to utilise existing on-site methods.
11. On the 23<sup>rd</sup> of July 2020 the applicant provided an amendment to the application where they revised the scheme plan originally submitted and amended the proposed landscaping requirements. In summary the amendment provided the following:
  - 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.

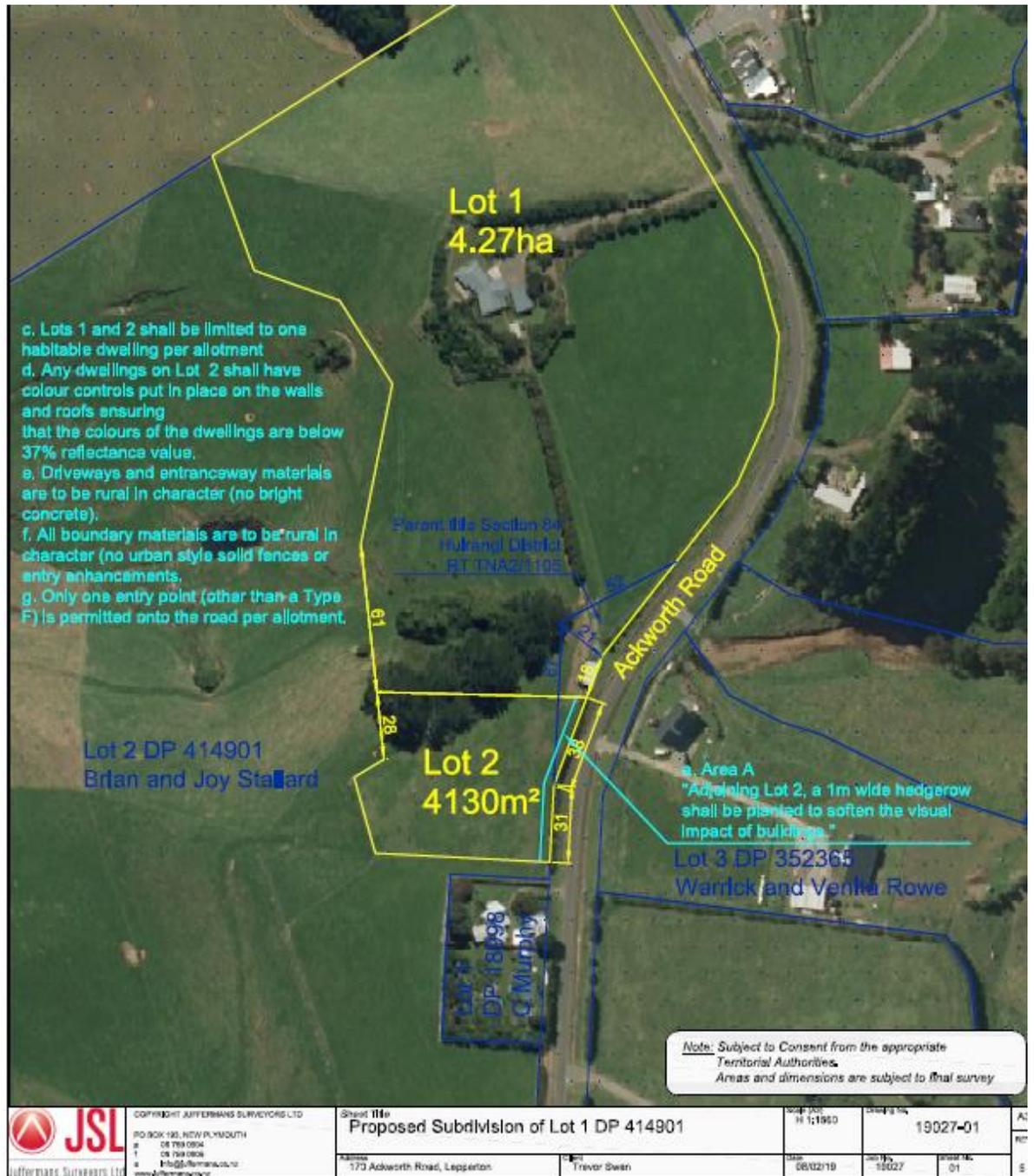


Figure 2: Scheme Plan for SUB19/47283

### History of Subdivision within the site

12. The site being subdivided comprised two titles at 5 March 1999 as follows:
- TNA2/1105 Section 284 Huirangi District (1085m<sup>2</sup>); and
  - TNK2/883 Lot 1 DP 19140 (34.4440ha)

Subdivision of Lot 1 DP 19140 was deposited on 17 February 2000 creating one allotment (Lot 1 DP 20456) and one balance allotment (Lot 2 DP 20456).

Subdivision of Lot 2 DP 20456 was deposited on 11 February 2004 creating one allotment (Lot 1 DP 331756) and one balance allotment (Lot 2 DP 331756).

Neighbouring subdivision creates an allotment to be amalgamated with Lot 2 DP 331756.

Subdivision of Lots 1 DP 331756, Lot 2 DP 340504, Lot 4 DP 337764 and Section 284 Huirangi District was deposited on 6 May 2005. The subdivision created no additional titles however the District Plan rules did not consider this a boundary adjustment as Section 284 Huirangi District was a road severance allotment.

The proposal relies on there having been 3 additional lots created from the parent titles (Lot 1 DP19140 and Section 284 Huirangi District) and a boundary adjustment to enlarge Section 284 Huirangi District. It states:

*In May 2009 boundary adjustments were undertaken between 3 existing parcels of land with land being redistributed between the existing balance Lot and Lot 1 DP 331756 and between the existing balance Lot and the land held Section 284 Huirangi District, which established the area that forms the application site being Lot 1 DP414901 having an area of 4.7830ha. (no additional Lots were created).*

This statement is incorrect and Lot 1, the allotment subject to this application, was created as a retirement allotment by Trevor and Beverley Terry to include their existing dwelling. A simultaneous boundary adjustment was undertaken between the site and Lot 1 DP 331756. The subdivision of the subject site was not a boundary adjustment and was counted as an additional allotment under the Operative District Plan rules. As part of the s223 and s224 process the applicant requested that the Council cancel an amalgamation covenant that related to the two parent titles.

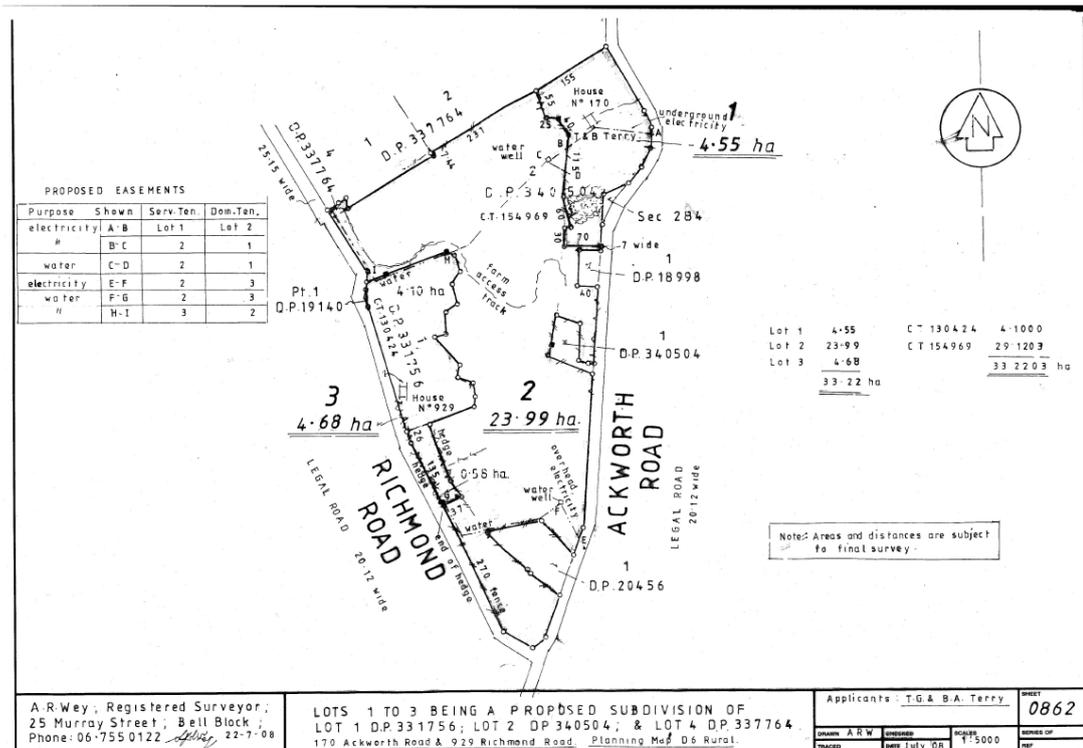


Figure 3: Scheme plan of the 2009 subdivision to create the subject site.

13. Overall, it is considered that the parent title being Lot 1 DP 19140 has created four small allotments from the parent title and Section 284 Huirangi District, one small allotment from that parent title. Across the two parent titles this proposed subdivision will create a 6<sup>th</sup> small allotment. However, it is considered the second arm of the discretionary provision Rule Rur78 is still available to this application as there are two separate parent titles and neither parent title has created the fifth small allotment where a balance area between 4ha and 20ha is provided, as is the case in this subdivision. Therefore, the subdivision meets the discretionary provision of Rule Rur 78.

## **Statutory Requirements**

### **National Environmental Standards**

14. Regulation 5(5) of the Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011 (NES) describes subdivision as an activity to which the NES applies where an activity that can be found on the Ministry for the Environment Hazardous Activities and Industries List (HAIL) has occurred. I have checked the TRC Selected land Use register and there is no evidence that the site has contained an activity listed on the HAIL. Therefore, the NES does not apply.

### **Statutory Acknowledgement Area**

15. The site does not contain a Statutory Acknowledgement Area. The Proposed District Plan maps show that there is a stream that is unnamed that flows into the Mangaonia Stream that is a tributary of the Waiongana Stream listed as a

Statutory Acknowledgement Area to Te Kotahitanga O Te Atiawa Trust and Te Kotahitanga O Te Atiawa Trust were sent a copy of the application for their comment.

16. On further inspection of the site it was confirmed this mapping was an error and no waterbody flows through or into the subject site. Ms Sarah Mako confirmed acceptance of this via email to myself dated 13<sup>th</sup> of July 2020, but confirmed to enhance the waterbody adjoining the site that protection, retention, enhancement and maintenance of the existing native vegetation on site in perpetuity would be amendable and a requirement for soil and sediment control during any earthworks and construction on Lots 1 and 2. Ms Mako suggests both of these requirements could be secured by a s221 consent notice control on the subdivision. A copy of this email correspondence is appended to the application as Appendix 1.
17. The applicant has confirmed in email to me that the applicant does not consider that a s221 covenant over the native vegetation is necessary as it is not of quality or expanse that warrants formal protection. No comment has been received by the applicant as to whether sediment control is offered as a condition of consent in line with Ms Mako's recommendation. The application is considered to not contain a statutory acknowledgement area given no waterbody is present on the site.

#### Operative District Plan

18. The New Plymouth District Plan was made operative on 15 August 2005. The site is located in the Rural Environment Area.
19. The proposal has been assessed against the following District Plan rules:

<b>Rule #</b>	<b>Rule Name</b>	<b>Status of Activity</b>	<b>Comment</b>
Rur76	Increase in users to an existing right of way	N/A	
Rur78	Minimum allotment size and number of allotments	Discretionary	A discretionary activity provides for up to 5 allotments from one parent title. The subdivision is created over land originally contained within two parent titles. The subdivision will create the 6th allotment from two parent titles. The proposed balance allotment exceeds 4ha in area.
Rur79	Access	Controlled	The application confirms sight visibility for access to Lot 2 will be achieved.

Rur81	Water/ Waste water and storm water services	Controlled	
Rur82	Building Platform	Controlled	
Rur83	Existing buildings bulk and Location	Discretionary	The proposed internal boundary between Lots 1 and 2 will be 5m away from the existing implements shed to be retained with the boundaries of Lot 1. This infringes Rule Rur18.

20. There are no interests on the record of title that would restrict the proposal.

21. Relevant District Plan Policies and Objectives:

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

22. Overall the proposal is a discretionary activity under the Operative New Plymouth District Plan.

Proposed New Plymouth District Plan (Notified 23 September 2019)

23. The site is located within the Rural Production Zone and contains no notations relevant to the subject site, with the exception of the identification of a waterbody on the Proposed Plan. As a result of discussions with the applicant, Te Atiawa and a site visit it is considered the waterbody is located on the subject site.

24. The application was lodged prior to the Proposed Plan being notified. No decisions have yet been made on the Proposed Plan. No rules of the Proposed Plan are considered relevant to the proposal as it has been confirmed no waterbody traverses the subject site.

**Notification Summary**

25. The notification decision was made on the 21<sup>st</sup> of December 2019 by Ms Rowan Williams, the NPDC Planning Lead. The application was precluded from public notification as it is a discretionary activity. The notification report concluded that the application be limited notified in accordance with section 95B of the Resource Management Act 1991 (RMA) on persons at adjacent property 198 Ackworth Road

who were deemed adversely affected by the proposal and had not provided their written approval.

26. The written approval was provided from the following parties at the time the consent was lodged.

Map Identifier (Figure 2)	Name	Address
1	Warick and Venita Rowe	193 Ackworth Road
8	Bryan and Joy Stallard	185 Ackworth Road

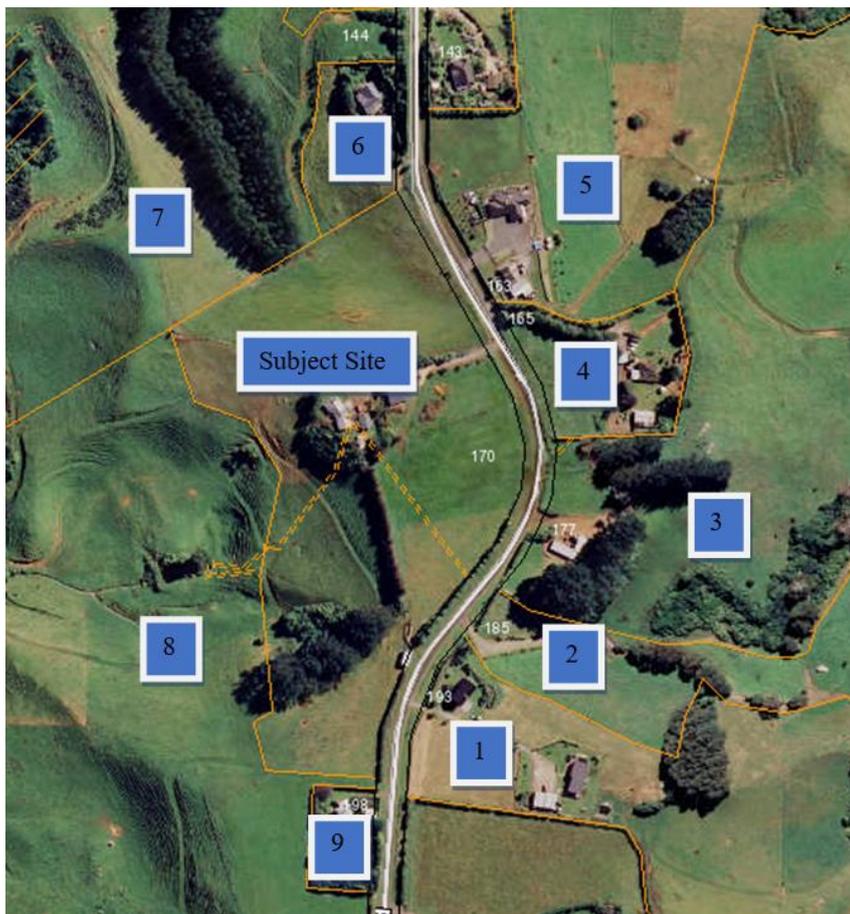


Figure 4: Subject site and adjacent land

27. The notification decision concluded property owners at properties 2 – 7 in Figure 3 above were not affected by the proposed subdivision.

28. Subsequently following notification of the application property 1 (as per fig.4), went through a subdivision process where a new allotment was created in the north western road corner of the site, cutting off an existing dwelling from the wider property. This allotment has been recently sold to S and T Usher. Given the

creation of this allotment and the new owners being located opposite the site the applicant sought their written approval. The written approval of S and T Ussher was provided by the applicant on the 25<sup>th</sup> of June 2020.

29. The applicant has subsequently sought the reapproval of the property owners at property 1 (W and V Rowe) following the amendment that was made to the application by the applicant, summarised above, on the 23<sup>rd</sup> of July 2020.

30. The application was notified to Ms Colleen Butterworth on the 21<sup>st</sup> of December 2019 with submissions closing on the 10<sup>th</sup> of February 2020.

### **Submission summary**

31. A submission was received in opposition to the subdivision from Ms Butterworth on the 7<sup>th</sup> of February 2020, the owner and occupier at 198 Ackworth Road. The submission can be summarised as follows:

- The site subject to subdivision and the submitters property being 198 Ackworth Road, is separated by a 7m wide access strip only.
- The submitter is adversely impacted by the subdivision by buildings and vegetation being located in the area of proposed Lot 2.
- Rural outlook is enjoyed by 198 Ackworth Road to the north over proposed Lot 2.
- The proposed planting proposed by the applicant will screen/ impact on the submitters rural outlook.
- The submitter provides photos to identify their rural outlook and the extent of potential effects on their rural outlook and amenity currently experienced.
- The submitter requests that NPDC decline the application with Lot 2 in the current location and an alternative location for Lot 2 is submitted to maintain the rural character of the property at 198 Ackworth Road.

### **Pre-hearing meeting**

32. The applicant requested prior to a pre-hearing meeting being scheduled that a site visit is undertaken with NPDC staff, the applicant and the submitter to discuss and consider alternatives. This site visit was scheduled for 25<sup>th</sup> of March 2020, the day prior to the country going into a nationwide lockdown due to the Covid-19 pandemic.

33. Given the situation and recommendations from the Ministry of Health the site visit was cancelled, and it was agreed discussions between the submitter and the applicant would occur to see if mutual agreement could be reached between both parties. NPDC was not party to these discussions but it was agreed by both parties on the 2<sup>nd</sup> of June that no resolution was made and that they both wish to proceed to a hearing.

### **Assessment of the Application**

34. The following relevant matters have been considered in the assessment of this application under section 104 of the RMA:
35. The actual and potential effects on the environment from the proposed subdivision are considered to relate to the broad categories of:
- Permitted baseline assessment;
  - Rural Character and Amenity; and
  - Cumulative Effects;

### **Permitted baseline assessment**

36. Section 104(2) provides discretion to apply the permitted baseline. Section 104(2) of the RMA provides that when forming an opinion about whether there are any actual or potential effects on the environment of the following activity, the consent authority:

*"may disregard an adverse effect of an activity on the environment if a national environment standard of the plan permits an activity with that effect"*

37. The purpose of the permitted baseline test is to isolate and make effects of activities on the environment that are permitted by the plan, or have already been consented to, irrelevant. When applying the permitted baseline such effects cannot then be taken into account when assessing the effects of a particular resource consent application. The baseline has been defined by case law as comprising the 'existing environment' and non-fanciful (credible) activities that would be permitted as of right by the plan in question.
38. As the District Plan does not allow for any subdivision as a permitted activity there is no permitted baseline in this instance. Although, there is no permitted baseline for subdivision, one can be considered for permitted building activity and establishment of vegetation on site, particularly in the location of proposed Lot 2.
39. In terms of the establishment of an additional habitable building on site this could only occur if it was within 25m of the existing dwelling on site (Rule Rur12A). Given the location of proposed Lot 2 being considerably further than 25m from the existing dwelling no permitted baseline in relation to an additional habitable building is considered relevant to this proposed subdivision as the resultant built form on Lot 2 in relation to a future habitable building is not currently permitted by the District Plan.
40. In the location of proposed Lot 2, the establishment of other buildings is a permitted activity provided compliance is achieved with the Rural Environment Area bulk and location provisions. Any other building would need to be sited 30m from Ackworth Road and 10m from any side boundary. Therefore, a building (eg an implement shed or hay shed) could be constructed in the area of proposed Lot 2 that would

obstruct some rural outlook currently appreciated by the submitter at 198 Ackworth Road or result in the loss of open space when viewing the site from Ackworth Road. However, I consider the use of the permitted baseline analysis in terms of comparing effects of this subdivision to a permitted activity to not be feasible or appropriate for the following reasons:

- A shed or non-habitable building is generally synonymous with the rural environment and what constitutes rural character and does not contain as frequented vehicle crossing, outdoor living spaces and garden and curtilage areas;
- The property owner at 198 Ackworth Road's primary rural outlook is to the north, north west. I consider it unlikely (or fanciful) a shed would be constructed at the western edge of Lot 2, being well setback from the road and at the opposite end of the site from the existing dwelling on Lot 1; and
- A large farm implement shed is already located at the south eastern extent of Lot 1 near the Ackworth Road frontage;
- The proposal is so different in kind and purpose from what the District Plan framework allows for as a permitted activity that the permitted baseline should not be utilised.

41. I therefore consider it unlikely a shed would be constructed on Lot 2 that would be to the same scale and intensity that would result from the creation of an allotment and the resultant built form from a habitable building and any other buildings on site that potential effects are comparable.

42. The other relevant permitted activity that could occur in the location of proposed Lot 2 currently, is the erection and establishment of vegetation on the site that could screen views from both Ackworth Road and 198 Ackworth Road. The establishment of vegetation is not considered fanciful given the former Barberry Hedge and the recently established Pittosporum hedge along the road frontage. This vegetation can result in the loss of open space views across a rural environment, but vegetation is an element that forms part of rural character and does not detract from it. Therefore, whilst it is acknowledged that the establishment of vegetation in the rural environment is a permitted activity it is not considered comparable to the proposed subdivision and resultant built form from the creation of Lot 2 that it warrants disregarding certain potential rural character effects. Potential loss of rural amenity and rural outlook is discussed below in the rural character assessment in relation to permitted vegetation.

43. The permitted baseline assessment as outlined above, is accepted to be relevant to this application in that permitted vegetation may reduce some open space rural amenity and visual outlooks over the subject site currently experienced. However, I do not believe permitted vegetation would result in comparable effects to the proposed two lot subdivision and the development rights that would be enabled on proposed Lot 2.

## **Rural character and amenity**

44. The primary potential effects in relation to this subdivision relate to the rural character and amenity effects that will result from the subdivision on the immediate and wider rural environment.
45. The existing environment comprises a mixture of rural land holdings on a wide range of section sizes including lifestyle living and rural productive farm land. The site is located along a stretch of Ackworth Road where this is a cluster of habitable buildings in close proximity to one another.
46. Ms Erin Griffith of Natural Capital, a qualified Landscape and Urban Design Expert has provided a landscape review of the application and provided some landscape advice. Ms Griffith's report is attached to this s42A report as Appendix 2 and is intended to provide expert landscape advice to this report.
47. Rural Character is the combination of elements that make an area 'rural' rather than 'urban'. Rural areas are typically distinguished by a dominance of openness and rural practices over manmade structures not related to the primary use. Rural character<sup>1</sup>, as defined by the District Plan, includes the key elements of:
- Spaciousness,
  - Low density,
  - Vegetated,
  - Production Orientated,
  - Working Environment,
  - Rural Based Industry and
  - Rural Infrastructure.

The proposed subdivision has the potential to create adverse rural character effects resulting from one additional rural allotment. The potential effects are discussed below under the relevant rural character elements.

### *Spaciousness and Low density, Vegetated*

48. There is potential to change the spaciousness of the environment in the location of the subject site with an additional dwelling and curtilage areas and development rights created as result of this subdivision. There would be a change in density with the resultant additional dwelling (beyond what is anticipated on the site currently) being authorised by the granting of this subdivision consent.
49. The subject site currently provides elements of low-density spaciousness across the flat open pastoral paddock in the location of Lot 2 and the existing open rolling paddocks of Lot 1. Some of this low density spaciousness will be lost as a result of

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<sup>1</sup> Issue 4 of the New Plymouth District Plan

the subdivision as the subdivision will create a separate record of title which is likely to have additional planting, fencing, creation of a vehicle crossing and driveway and built form established on Lot 2 which is likely to include a habitable building and a separate implement shed.

50. The applicant offers the proposed mitigation/ design controls to try and retain rural character, these are:

- Only one habitable building can be created on Lots 1 and 2;
- Any habitable building on Lot 2 will have colour controls to ensure the reflectance value of the roof and exterior walls is below 37%;
- Driveways and entranceways materials are to be rural in character (no bright colours);
- All boundary materials are to be rural in character with no urban style sold fences or entry enhancements;
- Only one entry point (other than a Type F) is permitted on the road per allotment; and
- A 1m Pittosporum hedge planted along the road frontage of Lot 2.

51. The revised scheme plan and mitigation provided by the applicant was undertaken after the applicant removed the existing road frontage hedge that provided a visual screen from Ackworth Road into proposed Lot 2 and was originally offered to be retained by the applicant. It was unclear if this hedge was located in road reserve or the applicants property. The applicant has now planted a Pittosporum hedge in replacement of the removed hedge on the eastern side of the established fence, in the location of the removed hedge. It is also unclear if the newly planted vegetation is within the subject site or not. Ms Griffith in her landscape memo provides the following summary of the proposed mitigation:

*"I note the original mitigation strategy for this boundary recommended a mixed evergreen hedge to 5m wide and 4m high(min) if the barberry hedge was to be removed. I concur with this form of mitigation in place of the now proposed single row of pittosporum spp. Mixed native plantings have a greater synergy with broader biodiversity values (birds, insects, invertebrates), and the natural (or naturally occurring) vegetation types; they are also often less maintenance (no need to regularly trim or prune by mechanical or other means), and they can have higher success rates in terms of overall appearance of the buffer/screen (if one dies, it's not too much of a visual issue as it's quickly filled in by other more successful species).*

*However, single species evergreen hedges are common in the surrounding environment.... If established and maintained well, they will provide visual screening of a future dwelling depending on the height and density of the hedge. The height of the proposed pittosporum hedge has been omitted on the plan*

*provided to NPDC 22 July 2020. If a height of over 2m is desired, the width is likely to be 1.5 -2m to allow for sufficient density and health of this particular species."*

52. Therefore, the proposed vegetation along the road frontage of Lot 2 is likely to provide a visual screen of any future built form on Lot 2. However, it may not be the most effective landscaping tool to screen views into the site and enhance the landscaping on site and within the immediate environment, particularly as no recommended height has been provided. In addition, there will be a vehicle access necessary along this road frontage and a gap created in the landscaping screen. The location of this access and size is not provided in the application but it is considered likely it will provide intermittent views into Lot 2 from Ackworth Road.
53. The District Plan seeks to control the density and scale of development in the rural environment area by providing for one small allotment where there is a large balance area, which promotes spaciousness and low density, production orientated environment. In this case there would be a balance allotment of less than 20ha but greater than 4ha (4.27ha) and will create the fifth allotment from the parent title. Therefore, the design and location of the development on Lot 2 needs to be carefully considered against the low-density rural character outcomes sought in the District Plan to ensure rural character is maintained.
54. Lot 1 will maintain some elements of open space, low density built form with the dwelling on Lot 1 being located in the centre of this proposed allotment and no further habitable buildings or urban vehicle accesses being enabled through this subdivision as a result of the proposed mitigation measures offered by the applicant. The garage on Lot 1 is approximately 60m from Ackworth Road and the dwelling is approximately 98m and therefore this built form is well setback from the road. Lot 1 exceeds 4ha in size which is anticipated as a discretionary activity in the District Plan.
55. Given the winding nature of Ackworth Road in this site's locality, the southern extent of the site (where proposed Lot 2 is located), does provide some important low density, vegetated elements that are currently removed of built form. The existing implement shed, within Lot 1 near the north eastern corner of Lot 2, is considered to fit within the rural environment character in my opinion as it has a rural appearance and does not detract from the low density elements of the site.
56. As discussed by Ms Griffith in her report, attached as Appendix 2, the location of Lot 2 is logically appropriate as it is separated from the remainder of the site by topography and an existing access track. It is also clustered around a number of other existing dwellings in the immediate environment. Ms Griffith summarises the wider public viewpoint as follows:
- "The short duration of views towards the lot, screening proposed, the land unit's isolation from the rest of Lot 1, and the 'lifestyle' typology of Ackworth*

*Road, provide context for the Lot. In this regard, and with respect to the commentary above on length and angles of views, the lot has the capacity to absorb the proposed rural-residential lot, with the onus being on the mitigation strategy...*

*In conclusion, I consider the sensitivity of the view as experienced from Ackworth Road to be low-medium when travelling from the south, and medium when travelling from the north”.*

57. The mitigation strategy is further discussed by Ms Griffith and the appropriateness of mitigating potential effects on the Ackworth Road travellers and the adjacent landowner at 198 Ackworth Road. I will discuss this further below.

58. I will firstly consider the low-density, vegetated potential effects from the adjacent property at 198 Ackworth Road, who has submitted in opposition to this application. The rural low-density open space outlook viewed towards the north over proposed Lot 2 from the submitter’s property needs to be considered under s104(1) (a).

59. The submitter has a two-storey dwelling that is located approximately 17.5m from the southern boundary of Lot 2. The dwelling has a north to north west rural outlook that includes distant coastal views over proposed Lot 2. It is accepted this rural outlook over the subject site could be altered by permitted activities. This is discussed further below. However, in the absence of the permitted baseline, it is considered that the establishment of Lot 2, with a complying habitably building on the site, (30m from the road boundary and 15m from the side boundary) will impact the submitters rural northerly outlook which is currently one of low density built form.

60. Ms Griffith provides a potential permitted building platform on Lot 2 and the extent this building platform will impact on the submitters rural outlook. Ms Griffith concludes that potential effects on 198 Ackworth Road as follows:

*“The occupant of 198 Ackworth Road does not have a protected viewshaft, and has, in effect, been ‘borrowing’ this vista, something that is synonymous with rural-residential living. In this instance, the view is not protected.*

*However, in terms of assessing likely and potential adverse effects resulting from the subdivision proposal, the introduction of a potentially two storied dwelling and likely associated water tanks, curtilage, potential garaging and/or sheds (with no controls), has an Overall Significance of Change of Moderate-High. ”*

61. I consider it important to also acknowledge that low density open space elements go beyond this rural outlook enjoyed by 198 Ackworth Road and includes what can

be heard and smelt. Habitable buildings in relatively close proximity to one another, regardless of whether the two can be seen from one property to the other can affect rural character namely the elements of density and spaciousness. Continual fragmentation of the rural environment affects the ability to achieve these low-density elements that retain rural character.

62. I acknowledge that a shed could be constructed near the boundary of 198 Ackworth Road, or vegetation established along this boundary, that may affect the rural outlook currently experienced by 198 Ackworth. However, I do not believe the effects associated with these permitted activities are comparable to those resulting effects from the creation of proposed Lot 2.

63. Therefore, given the potential effects on those travellers along Ackworth Road and to the occupiers of 198 Ackworth Road the proposed mitigation package must be significant to effectively mitigate effects and maintain rural character.

64. The Council's Rural Subdivision and Development Design Guidelines (May 2012) provides design principles that should be considered when undertaking development in the rural area (pg 12). These considerations consist of *design and layout, building location, landscaping, servicing and building appearance*. I do not believe all these design principles have been considered and applied to this subdivision to ensure the retention of rural character.

65. The mitigation strategy offered by the applicant in my opinion is not able to effectively mitigate potential effects on spaciousness and low-density elements which are critical for maintaining rural character. I support Ms Griffiths areas of contention with the mitigation, which is summarised below:

*"The main areas of contention are:*

- *No height restrictions to reduce the dominance of built form on the experience of those travelling along Ackworth Road, or as visible from Richmond Road.*
- *No restrictions (height or colour) on 'other buildings' and their proximity to 198 Ackworth Road....*
- *No mitigation toward night lighting effects.*
- *No considered analysis of the effect the building platform may create on the visual amenity and character effects experienced from 198 Ackworth Road (not withstanding the agreement to remove the 4m high planting along the southern boundary).*
- *Property boundary between Lot 1 and 2*

66. In addition to these matters identified above, I consider that further consideration should be given to the following:

- The identification of building platforms for both habitable and non-habitable buildings on Lot 2 to more accurately consider their built form and appearance from Ackworth Road and 198 Ackworth Road;
- The identification of a no-build area to provide for some open space, low density built form on Lot 2;
- The reinstatement of a 5m wide native vegetation buffer along the road frontage of Lot 2;
- Identification of a vehicle access location on Lot 2 and further consideration for planting and/or alternative design measures to control this viewshaft into Lot 2 from the road; and
- Height controls on all buildings

67. In the absence of sufficient mitigation measures being proposed by the applicant it is considered 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.

*Production orientated and working environment*

68. The current use of the site is for the grazing of dry stock. This activity could continue following the subdivision but an area of productive land would be lost by the erection and establishment Lot 2, the habitable building, driveway, curtilage and garden area.

69. In this regard the subdivision would result in a loss of production orientated land but in the context of the site and wider environment this is considered to be less than minor given the retention of some production orientated land within Lot 1 that in total exceeds 4ha in size. Overall, any potential effects on the loss of productive land are able to be appropriately mitigated by the balance allotment.

*Rural Based Industry and Rural Infrastructure*

70. The site does not contain any rural based industry and with regards to infrastructure, as there is no reticulated drainage network in the vicinity of the site, any potential effects on public infrastructure will be nil. The sites are to be self-sufficient with regards to three waters. Any adverse effects would not be more than minor.

*Summary*

71. Overall, it is considered that the proposed subdivision will result in a loss of open space and low-density built form that cannot be appropriately mitigated. This resultant loss in open space and increase in built form would result in adverse effects on rural character and amenity. Any potential adverse effects on rural character and amenity are considered to not be appropriate and at a scale and intensity that is inconsistent with Issue 4 of the Operative District Plan.

## Cumulative effect

72. A cumulative effect is one that arises over time or in combination with other effects. Cumulative effects are included in the definition of 'effect' in Section 3 of the RMA which provides as follows:

*In this Act, unless the context otherwise requires, the term effect includes—*

- *(a) any positive or adverse effect; and*
- *(b) any temporary or permanent effect; and*
- *(c) any past, present, or future effect; and*
- *(d) any cumulative effect which arises over time or in combination with other effects—*

*regardless of the scale, intensity, duration, or frequency of the effect, and also includes—*

- *(e) any potential effect of high probability; and*
- *(f) any potential effect of low probability which has a high potential impact.*

73. The term cumulative effect encompasses two concepts;

- Effects arising over time; and
- Effects arising in combination with other effects.

74. The proposed subdivision will result in another allotment and habitable building near 193, 193A and 198 Ackworth Road. The creation of a lifestyle allotment in the proposed location of Lot 2 does create a cluster of allotments and or habitable buildings along this stretch of Ackworth Road. The creation of Lot 2 creates further fragmentation on the rural environment that is not consistent with elements that constitute rural character, namely open space, low density-built form. Clustering of allotments and dwellings is acknowledged to be good practice and identified in the Rural Subdivision Design Guidelines. However, these clusters need to be well designed, landscaped and sympathetic to the receiving environment. I believe the application is finely balanced and an additional allotment in this locality along this stretch of road will create an adverse cumulative effect, where the appearance of built form is more lifestyle than rural.

75. The receiving landscape is fragile in the fact that the landscape is not broad or expansive enough, certainly not undeveloped that broad open space elements are still evident and able to be retained. Therefore, additional lifestyle development in this environment needs to occur sympathetically to the receiving environment. The proposed application does not sufficiently in my opinion provide mitigation measures to adequately address and ensure an adverse cumulative effect does not result from the subdivision.

## Overall effects summary

76. Overall, I believe the proposed subdivision cannot avoid, remedy or mitigate all of the potential adverse effects on rural character and amenity that would result from the proposed two lot subdivision, specifically the creation of Lot 2.

### Proposed New Plymouth District Plan (notified 23 September 2019)

77. The Proposed District Plan was notified on 23 September 2019 and is now closed for public submissions with further submissions being notified on the 12<sup>th</sup> of August, closing on the 25<sup>th</sup> of August 2020.
78. The land is proposed to be zoned as Rural Production Zone. Subdivision of land remains an anticipated activity within this zone but the proposed activity would be a non-complying activity (for lot size) under the Proposed Plan as the 4ha balance provision of the rural lot size subdivision rule as a discretionary activity is proposed to be removed.
79. No relevant provisions have immediate legal effect that relate to this application. An assessment of the relevant objectives and policies is provided below.

### **Assessment of Proposal against Planning Documents - Section 104(1)(b)**

#### National Environmental Standards

80. There is no NES relevant to this application.

#### Taranaki Regional Policy Statement

81. The Taranaki Regional Policy Statement (RPS) considers regional wide issues on water, soil and land, air, freshwater, indigenous biodiversity, natural and historic features, waste management, minerals, energy and the built environment. A number of these issues are high level regional issues and the proposed subdivision will not impact on these wider regional issues.
82. Section 10 of the RPS outlines Natural Features and Landscape, historic heritage and amenity values. The proposed subdivision will not impact on outstanding natural features and landscape. Of relevance to this proposal is 10.3 of the RPS which seeks to maintain and enhance amenity values. AMY Objective 1 and AMY Policy 1 seeks to maintain and enhance amenity values both in a rural and urban setting. As concluded in the effects assessment above the application will not provide for the maintenance of rural character and amenity. Therefore, the application is not seen to be consistent with this specific relevant objective and policy of the RPS.

#### Operative District Plan

83. The following objectives and policies of the District Plan are relevant to this application.
84. Objective 1 and policy 1.1 are about protecting amenity values and ensuring their effects are compatible with the character of the area. As outlined above the application, through the creation of Lot 2 creates the potential to adversely impact

the character and amenity values of the wider environment through the loss of open space, low-density elements that retain rural character and amenity values. The application is therefore not considered to be consistent with this objective and policy.

85. Issue 4 deals with the loss or reduction of rural amenity and character.

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

#### Policy 4.1

Objective 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."*

86. The application is partly contrary to this objective because the proposal is creating one small allotment with the absence of a large allotment over 20ha to provide spaciousness and production orientated nature. However, Lot 1 is over 4ha in size and is still able to retain rural open space and pastoral and vegetated land that can be utilised for production orientated use.

#### 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.*

87. This policy is similar to the previous and the application is considered to be contrary to this policy for the following reasons.

- No large balance allotment is provided over 20ha in size;
- The creation of Lot 2 reduces the spaciousness and low-density elements of the surrounding environment;
- The proposed mitigation measures do not sufficiently consider the layout, design and visual treatment of proposed Lot 2 to adequately respond to the existing environment; and
- No consideration has been given to portion of the site's undulating nature to screen and absorb an increase in built form.

88. Overall, I do not believe the application is consistent with Policy 4.2.

#### 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.*

89. Similar to the reasons outlined in Policy 4.2 assessment above the subdivision does not apply design principles that will sufficiently mitigate the loss of open space through the creation of Lot 2 on the surrounding environment. Any built form on Lot 2 has the potential to detract from those rural character low density elements. I do not believe the application is consistent with this policy.

#### Policy 4.8

*Activities within the rural environment should not generate traffic effects that will adversely affect RURAL CHARACTER and the intensity of traffic generation should be of a scale that maintains RURAL CHARACTER.*

90. The proposal will increase the likely traffic in the immediate area; however, one additional dwelling is not likely to increase traffic on this local road in a discernible manner that would compromise rural character. The proposal is not contrary to this policy.

91. The proposal would not be contrary to the remaining objectives and policy set out in paragraph 11 which relate primarily to the issues of servicing.

92. The application is considered to be inconsistent with some of the above policies given that a small balance allotment is achieved and insufficient mitigation is provided to appropriately ensure an additional allotment can be absorbed into the surrounding environment without compromising rural character. Overall, when taking a broad judgement I do not believe the application is consistent with the relevant provisions of the Operative District Plan, specifically those that relate to amenity and rural character.

#### Proposed District Plan

93. The Objectives and Policies of the Proposed District Plan are required to be considered alongside those of the Operative District Plan as they have legal effect.

94. The following Objectives and Policies of the Proposed District Plan are considered relevant to the proposal:

#### **Objectives**

*SUB-O1 Subdivision results in the efficient use of land and achieves patterns of development which deliver good quality community environments that are compatible with the role, function and predominant character of each zone.*

*SUB-O2 Subdivision is designed to avoid, remedy or mitigate adverse effects on the environment and occurs in a sequenced and coherent manner.*

*SUB-O3 Infrastructure is planned to service proposed subdivision and development and to connect with the wider infrastructure network in an integrated, efficient, coordinated and future-proofed manner and is provided at the time of subdivision.*

*RPROZ-02 The Rural Production Zone is predominantly used for primary production.*

*RPROZ-03 The role, function and predominant character of the Rural Production Zone is not compromised by incompatible activities.*

*RPROZ-04: The predominant character and amenity of the Rural Production Zone is maintained, which includes:*

- 1. extensive areas of vegetation of varying types (for example, pasture for grazing, crops, forestry and indigenous vegetation and habitat) and the presence of large numbers of farmed animals;*
- 2. low density built form with open space between buildings that are predominantly used for agricultural, pastoral and horticultural activities (for example, barns and sheds), low density rural living (for example, farm houses and worker's cottages) and community activities (for example, rural halls, domains and schools);*
- 3. a range of noises, smells, light overspill and traffic, often on a cyclic and seasonable basis, generated from the production, manufacture, processing and/or transportation of raw materials derived from primary production;*
- 4. interspersed existing rural industry facilities associated with the use of the land for intensive indoor farming, quarrying, oil and gas activities and cleanfills; and*
- 5. the presence of rural infrastructure, including rural roads, and the on-site disposal of waste, and a general lack of urban infrastructure, including street lighting, solid fences and footpaths.*

*RPRPZ-06: Natural features, soil productivity, versatility of land and rural character and/or amenity are not compromised by adverse changes to landform, intensification of land use and/or built form, or urbanisation.*

*RPROZ-07: Sensitive activities are designed and located to avoid, remedy or mitigate adverse reverse sensitivity effects and/or conflict with primary production.*

### ***Policies***

*SUB-P1 Allow subdivision that results in the efficient use of land, provides for the needs of the community and supports the policies of the District Plan for the applicable zones.*

*SUB-P2 Manage subdivision of land containing significant natural features and landforms, waterbodies, indigenous vegetation, historic heritage, sites of*

*significance to tangata whenua and/or other identified features to ensure their protection or enhancement.*

*SUB-P3 Manage significant risks from natural hazards.*

*SUB-P4 Require infrastructure to be provided in an integrated and comprehensive manner.*

*SUB-P5 Require efficient and sustainable stormwater control and disposal systems to be designed and installed at the time of subdivision.*

*RPROZ-P1: Allow activities that are compatible with the role, function and predominant character of the Rural Production Zone, while ensuring their design, scale and intensity is appropriate, including:*

- 1. agricultural, pastoral and horticultural activities;*
- 2. residential activities;*
- 3. Māori purpose activities;*
- 4. rural produce retail; and*
- 5. petroleum prospecting.*

*RPROZ-P3: 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).*

*RPROZ-P4: Maintain the role, function and predominant character of the Rural Production Zone by controlling the effects of:*

- 1. building height, bulk and location;*
- 2. setback from boundaries and boundary treatments; and*

### 3. *earthworks and subdivision.*

95. It is considered that the proposal is inconsistent with the subdivision, and rural production zone objectives and policies.

96. The Rural Production Zone objectives and policies like the Operative Proposed plan policy framework respond to and address fragmentation of the rural environment. The objective and policies in the Proposed Plan are more directive than the operative District Plan. Policy 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. The activity will result in the creation of one rural lifestyle allotment that in my opinion cannot adequately mitigate the potential effects on rural character and amenity.

97. Overall, the proposal is inconsistent with the relevant objectives and policies of the Proposed District Plan outlined above.

#### **Other Matters - s104(1)(c)**

98. The following other matters are considered relevant to the proposal:

##### *Consent Authority may refuse subdivision consent in certain circumstances s106*

- There are no identified natural hazards affecting the site subject to subdivision.
- Sufficient provision has been made for legal and physical access to each allotment created by the subdivision.
- There is no reason to decline this application under section 106 of the RMA.

#### **Part 2 of the RMA**

99. Having regard to the above assessment it is concluded that the proposal is inconsistent with some of the principles (sections 6-8) of the Resource Management Act 1991. These are listed as other matters in Section 7 which particular regard shall be given to Section 7 (c) (the maintenance and enhancement of amenity values) and 7 (f) (maintenance and enhancement of the quality of the environment) as they relate specifically to the issue being around the maintenance and enhancement of rural character in relation to this subdivision.

100. Overall the application is considered to not meet the relevant provisions of Part 2 of the RMA as the proposal cannot achieve the purpose (section 5) of the RMA being sustainable management of natural and physical resources.

#### **Recommendation**

101. That for the above reasons the application be declined pursuant to Section 104, 104B, 108 of the Resource Management Act. The following conditions listed in Appendix 3 are recommended should consent be granted.

**Report and recommendation by:**

*Laura Buttimore*  
*Consultant Planner*

**Date:** 21 August 2020

Appendix 1: Email correspondence from Te Kotahitanga O Te Atiawa Trust

Appendix 2: Landscape Memo: Natural Capital Ltd

Appendix 3: Draft conditions for SUB19/47283