

**BEFORE THE INDEPENDENT HEARING COMMISSIONERS
APPOINTED BY NEW PLYMOUTH DISTRICT COUNCIL**

PPC18/00048

Under the Resource
Management Act 1991
(**RMA**)

In the matter of an application by Oākura
Farm Park Limited to
vary or cancel Condition
4 of Consent Notice
Instrument No.
9696907.4 on Lot 29 DP
497629

And

In the matter of Proposed Private Plan
Change 48 to the New
Plymouth District Plan
requested by Oākura
Farm Park Limited for the
proposed rezoning of
land at Wairau Road,
Oākura

**OUTLINE OF SUBMISSIONS OF COUNSEL
FOR MATTHEW PEACOCK; RICHARD SHEARER; STEVEN
LOONEY; and WAYNE LOOKER (SUBMITTERS)**

RMY LEGAL
LAWYERS
Private Bag 2031
DX NX10021
NEW PLYMOUTH
Telephone No. 06 769 8080
Fax No. 06 757 9852
Lawyer acting: SWA Grieve
Email: sgrieve@rmy.co.nz

MAY IT PLEASE THE INDEPENDENT HEARINGS COMMISSIONERS

Introduction

1. *“Residential housing along the main highway into Oākura (which will spread roughly to the lake ...) will... destroy the character of the village”,*
“Ribbon development along a main highway is considered undesirable for safety and aesthetic reasons”,
“If the identified Structure Plan triangle is developed, views up to the Kaitake Ranges will be obstructed by buildings. Ironically, protection of views up to the Kaitake Ranges Outstanding Landscape is a key aim of the Structure Plan”,
“The location chosen [for the Paddocks subdivision] will maintain uniqueness and protect the views of the Kaitake Ranges, especially from SH45’ ... ‘The location chosen will protect the open landscape giving rural appearances that will be preserved and maintained forever”.¹

2. Significant adverse effects that will flow from the proposal are numerous – while positive effects will be at the expense of the character and amenity of Oākura village – its people and community – and its/their surrounding rural environment – which are not beneficial effects at all – given that the consent notice registered against the title of the subject land in 2014 requires the protection of those things² – which were clearly of concern to Mr McKie in December 2010 – as recorded in his Paddocks subdivision evidence above.

¹ Evidence Michael McKie, Paddocks Subdivision Hearing, 16 December 2010, paras 38, 31; Evidence Cameron Twigley, 25 June 2019, paras 45, 46, and Annexure C (Evidence Michael McKie, Paddocks Subdivision Hearing, 16 December 2010 (ibid)

² See Evidence Cameron Twigley, 25 June 2019, Annexure A

Issues and Effects

3. The critical issues requiring determination in this case are, whether or not granting the consent notice condition variation/cancellation application (“the application”), being a discretionary activity, will promote the sustainable management of natural and physical resources - the purpose of the Resource Management Act 1991 (“RMA”); and, whether or not it will be consistent with the relevant provisions under the relevant statutory instruments³.

4. And, whether or not approving Proposed Private Plan Change 48 to the New Plymouth District Plan (“the request”) would;
 - (a) assist the Council to carry out its functions under s. 31 RMA so as to achieve the purpose of the RMA⁴; and would,

 - (b) give effect to and not be inconsistent with relevant provisions of the higher order national policy statements and planning instruments⁵ in this case such as the Regional Policy Statement for Taranaki (“RPS”); and would,

 - (c) be the most appropriate way to achieve the relevant objectives of the proposal, and District Plan having regard to other reasonably practicable options for achieving the objectives, the efficiency and effectiveness of the proposal in that regard, and the benefits and costs (of the environmental, economic, social and cultural effects) anticipated from implementation of the provisions of the proposal⁶.

³ Falling for consideration under s. 104(1)(b) RMA

⁴ S. 72, 74(1)(a) and (b) RMA

⁵ S. 75(3) and (4) RMA

⁶ S. 32(1) and (2) RMA

5. My clients are of the view that the proposal – which includes the negation of the existing consent notice – will have significant adverse effects on the environment (including the quality of the environment) including (but not necessarily limited to) significant adverse:

- environmental, social and cultural effects;
- amenity, landscape (including visual) and rural character effects;
- lighting and light overspill effects;
- noise, vibration and privacy effects;
- traffic and transport effects (including compromising the effective, efficient and safe land transport system in the public interest) and effects on the surrounding roading network (in terms of functioning, integrity, capacity and safety);
- infrastructure, services and community infrastructure effects;
- storm water, sewage, water supply and wastewater effects;
- agricultural land (in terms of loss of and fragmentation of agricultural land) and soil conservation effects;
- reverse sensitivity effects;
- earthworks effects;
- construction effects; and
- cumulative effects,

which will not be, nor are capable of being, adequately or appropriately avoided, remedied or mitigated.

6. It is respectfully submitted that the result of this case should be one that the Commissioners believe best achieves the purpose of the RMA: the sustainable management of natural and physical resources as defined in s. 5(2) RMA.

Evidence and Effects

7. My clients have called expert evidence from the following witnesses:

Expert Witnesses

- (a) Nicolas Gladstone, (retired) Road Safety Engineer.

Mr. Gladstone's evidence raises multiple concerns regarding the applicant's proposals and evidence in this context.

If granted/approved, the application and request ("the proposal") will have significant adverse traffic effects on the Oākura village and surrounding environment in his considered opinion.

Adverse effects on the free flow and safe movement of traffic – including vulnerable users such as children and mothers, the visually and mobility impaired, pedestrian and cycle traffic – not only at the proposed roundabout junction – but throughout the Oākura village generally – are inevitable in Mr. Gladstone's opinion⁷.

Those adverse effects (and others) are not addressed in the proposal or applicant's evidence – and Mr. Gladstone is highly concerned about the applicant's silence on those topics (and others) in respect of which little detail is provided⁸. In my submission the Traffic Expert Witness Joint Conferencing Statement dated 16 July 2019 reinforces his concerns.

Moreover, the proposed 12% uphill approach to the roundabout from the east along State Highway 45 ("SH45") –

⁷ Evidence Nicolas Gladstone, 25 June 2019, pp. 3-18

⁸ Supra, para 5

is well beyond what is safely acceptable⁹; not to mention the significant earthworks, altering levels, etc. that will be required to build the proposed roundabout¹⁰.

In his view, the roundabout is not a viable option at all with reference to relevant current design guidance – and the asserted benefits claimed by the applicant in respect of same are a fiction¹¹.

Like *all* of the other expert witnesses called for my clients in this case, he is also highly concerned about the lack of information and detail in the applicant's evidence in the context of his expertise, to enable an informed judgement to be made about these issues – in order to be able to fully understand the (scale and degree of the) adverse effects of the proposal on the environment.

He foresees significant adverse traffic effects being widely spread throughout the village; including at other junctions, down by the beach, at the school, play centre, central business district ("CBD"); including adverse car parking effects¹².

Traffic delays, frustrations and accidents are waiting to happen if the proposal is granted/approved; and appropriate consideration of pedestrians, cyclists, equestrians and other "vulnerable road users" in the applicant's evidence in this context is grossly inadequate in Mr. Gladstone's view – particularly in light of the strategic priorities in the New Zealand

⁹ Supra, p. 10

¹⁰ Supra, p. 5

¹¹ Supra, pp 9-12

¹² Supra, pp. 3-15

Government Policy Statement on Land Transport, 25 June 2018¹³.

Neither are the main “desire-lines” identified or satisfactorily addressed for those travel modes from the applicant’s proposed site – towards the school, CBD and beach¹⁴.

Further concerns are raised about the applicant’s proposed alternative route to school (by footpath connecting upper Wairau Road with Donnelly Street), underpass/subway and roundabout safety; including footpaths in the vicinity - and the further issues he foresees in respect of cyclists, equestrians and other vulnerable road users (and people generally) in respect of same¹⁵.

One important maxim which Mr. Gladstone always applied to any road engineering scheme (and that should be applied) is –

“... facilitating the free flow and movement of one class of road user should never be achieved at the expense of increased risk to some other class of road user”¹⁶.

In his view the proposal will be at the expense and increased risk to vulnerable road users; and the maxim has not been applied by the applicant.

Mr. Gladstone is also dubious that the relevant safety guides and standards (such as Austroad) can in fact be met by the applicant in the circumstances of this case – and due to the

¹³ Ibid

¹⁴ Supra, p. 8

¹⁵ Supra, pp 3-18 (including Illustrations 1-3)

¹⁶ Supra, p. 9

lack of robust evidence filed by the applicant to date – he cannot come to a judgement on the feasibility of same, one way or the other¹⁷.

Noting that the proposed roundabout will potentially be the only vehicular access to approximately 570 properties – with only one way in or out – he has concerns about that also; and about the termination of such trips¹⁸.

Of significant concern is the fact that the ‘appropriately designed’ roundabout is expected to have a crash rate almost four times worse than that currently existing¹⁹.

There is no justification for any cost saving deviation, or cost sharing, from full compliance with Austroad design standards - as the proposal shows no discernable benefits to any category of road user in Mr. Gladstone’s view²⁰.

I note that the New Zealand Transport Agency (“NZTA”) also has queries and concerns regarding funding, design and construction of appropriate traffic solutions; and opposes the inclusion of a new access from SH45²¹.

- (b) Richard Rollins, Environmental Engineer, WSP Opus, New Plymouth.

Mr Rollins is an experienced consultant Environmental Engineer who provided evidence about his concerns about the urbanisation of a large tract of the Wairau Stream and

¹⁷ Supra, pp. 3-18 (including Illustrations 1-3)

¹⁸ Supra, pp. 11-15

¹⁹ Supra, p. 14

²⁰ Supra, pp. 14, 15

catchment; which stream and catchment may be unique in Taranaki, because such a large fraction of it lies within the boundaries of the neighbouring National Park²².

He is highly concerned about adverse effects on people, particularly children, from pesticides in the water – particularly at the “Wairau Lagoon” on Oākura Beach (being a popular swimming spot for people in the community for many, many years)²³.

In his view the proposal will result in urbanisation of the catchment - which is likely to raise concentrations of pesticides in the stream, and in the lagoon²⁴.

The lagoon is much used by children (and their families), and children are known to be much more susceptible to toxic effects of pesticides than adults²⁵.

Mr Rollins notes that there are no baseline studies currently available to properly assess these risks and whether or not exposure levels will be safe²⁶?

Noting that the Wairau Stream and Wairau Lagoon water quality is generally good, if not pristine, he concludes there is significant risk that the Wairau Stream’s capability to meet the needs of future generations for safe, clean water for swimming

²¹ Evidence Kelly Standish, 25 June 2019, paras 3.1-4.1

²² Evidence Richard Rollins, section 3, 6, 8

²³ Supra, sections 4-8

²⁴ Supra, section 6

²⁵ Supra, section 5

²⁶ Supra, section 7

and wading will be irreparably harmed by the proposal; and will not achieve the purpose of the RMA²⁷.

- (c) Matthew Peacock, Civil & Structural Engineer, Set Engineering Limited, New Plymouth.

Mr Peacock's evidence highlights several areas where, again, the applicant's evidence is lacking; meaning that actual and potential adverse effects of the proposal on the environment cannot be properly understood and assessed (let alone a robust decision made about them)²⁸.

The applicant's evidence in that context is, in his view, typical for small scale residential land development proposals where potential adverse effects on the surrounding environment are relatively minor²⁹.

The level of information provided in the Applicant's evidence is woefully inadequate for a proposal which, if granted, would increase the number of residential lots in Oākura by about 60%³⁰.

Mr Peacock further notes his concerns about the existing stormwater network in Oākura, the downstream issues in respect of the flood zone surrounding Shearer Reserve and the Council's pump station; and, issues in respect of the current water supply servicing the Oākura village³¹.

²⁷ Supra, sections 8-12

²⁸ Evidence Matthew Peacock, 25 June 2019, paras 8.1-11.13

²⁹ Supra, paras 7.2, 11.4, 11.5

³⁰ Supra, para 11.1

³¹ Supra, paras 8.1-11.13

The applicant's proposed crossings (by road) of the Wairau Stream tributary will be a significant undertaking in his view³². The extent of those crossings is telling when seen in photos 4 and 5 on pages 25 and 26 of Appendix II of Mr Peacock's evidence in my submission.

The evidence of Messer's Kensington and Twigley also note their concerns about the significant adverse effects that will flow from those crossings and other modifications required to enable urban development – including the severing of Key Native Ecosystems (“KNE”) and the Esplanade Strip³³.

- (d) Peter Kensington, Landscape Architect (and RMA Planner), KPLC Limited.

Mr. Kensington is of the view that condition 4 of the consent notice should not be varied or cancelled – as it is part of the existing environment and is successfully protecting the rural character and amenities of the Paddocks subdivision and its surrounds³⁴.

If you were of a mind to cancel/vary condition 4 of the consent notice, or effectively negate it by granting the plan change request, (and I strongly submit that you should not be) - then the anticipated layout of urban development contemplated by the plan change will result in significant adverse landscape and visual effects in Mr. Kensington's view, for all the salient reasons set out in his evidence³⁵.

³² Supra, para 11.10

³³ Evidence Peter Kensington, paras 4.2, 9.31-9.38; Evidence Cameron Twigley, paras 130-133

³⁴ Evidence Peter Kensington, paras 4.1, 7.1-7.8; Landscape Expert Witness Joint Conferencing Statement dated 10 July 2019, section 12, pp 5-6

The proposal will not successfully integrate seamlessly with the existing landscape; it severs important landscape features – including an Esplanade Strip and KNE; and will lead to significant adverse effects³⁶.

Neither will it achieve the purpose of the RMA, nor give effect to the relevant statutory provisions under the District Plan and RPS in the context of his evidence³⁷.

Mr. Kensington agrees with Mr. Bain that the consent notice assists in preserving the views of the foreground and setting of Kaitake Ranges Outstanding Landscape and maintains rural spaciousness and character. Variation, cancellation or negation of the consent notice (either in whole or part) will result in significant adverse effects in his view³⁸.

He disagrees with Mr. Bain that the landscape and visual effects of the proposal will be contextually appropriate; nor does he share Mr. Bain's optimism that the proposed mitigation measures will adequately and appropriately avoid, remedy or mitigate such adverse effects³⁹.

He does, however, agree with Mr. Bain that significant visual adverse effects are likely to be experienced by people viewing the landscape change from approximate private properties, such as those living at the Paddocks⁴⁰.

³⁵ Supra, paras 4.2, 8.1-9.5

³⁶ Ibid

³⁷ Evidence Peter Kensington, paras 4.3, 9.7

³⁸ Supra, paras 7.4-7.5

³⁹ Supra, paras 9.2, 9.19-9.30

⁴⁰ Supra, para 9.3

And, he agrees with Ms. McRae that Mr. Bain's evidence does not adequately address the key landscape issues arising in the circumstances of this case⁴¹.

68 water tanks - which in themselves may create adverse landscape and visual effects as additional structures in the landscape – for example, have not been addressed in Mr. Bain's evidence⁴².

Neither does Mr. Kensington agree with Mr. Bain's reliance on the future urban development ("FUD") overlay as some form of development baseline, for all the reasons he sets out⁴³.

Mr. Comber's assertion that the site's landscape character - being a rural environment on elevated land at the edge of an Outstanding Landscape, with a predominance of open space and little evidence of built development unrelated to rural activities - is "unremarkable", is not accepted by Mr. Kensington either⁴⁴.

The irreversible adverse effects the proposal will have on the defining landscape elements of Oākura – its sense of place, and people's views and amenity values associated with the Kaitake Ranges and National Park are also of concern to Mr. Kensington⁴⁵.

⁴¹ Supra, para 9.4

⁴² Supra, para 9.5

⁴³ Supra, paras 9.8-9.13

⁴⁴ Supra, para 9.13

⁴⁵ Supra, paras 9.14-9.18

The proposal will also lead to adverse cumulative effects and a cumulative loss of rural character, and adverse effects on the rural-urban boundary demarcation of Oākura in his view⁴⁶.

Major earthworks will be required for a number of various construction related activities (including residential and business development, roading, bridge or culvert crossings, noise bund, underpass/subway, stormwater management), all of which are examples of poor design thinking - likely to lead to significant adverse effects on the environment generally, in his view⁴⁷.

Overall, Mr. Kensington concludes that the proposal must be declined/refused to ensure the protection of the landscape and the avoidance of adverse landscape (including amenity) and visual effects for all the compelling reasons set out in his evidence⁴⁸.

- (e) Cameron Twigley, Independent RMA Planning Consultant, Director, BTW Company Limited, New Plymouth.

Mr Twigley is also concerned about a lack of appropriate detail, regarding stormwater management, water modelling, traffic effects, reverse sensitivity effects, landscape effects and ecological effects, corresponding to the scale and the significance of the environmental, economic, social and cultural effects of the proposal⁴⁹.

⁴⁶ Supra, paras 9.28-9.29

⁴⁷ Supra, paras 9.31-9.38

⁴⁸ Supra, para 10.1

⁴⁹ Evidence Cameron Twigley, 25 June 2019, para 7

The variation/cancellation/negation of the consent notice condition would severely undermine the integrity of the Paddocks subdivision and in turn result in significant adverse effects on landscape, rural character and amenity values, including cumulative effects – also being contrary to the objectives and policies of the District Plan and RPS – and the purpose of the RMA⁵⁰.

Approving the plan change request would result in significant adverse effects in his view; and would not give effect to the National Policy Statement on Urban Development Capacity and the RPS; and would be inconsistent with Taiao Taiora, Oākura – A Growing Community – and the Kaitake Community Plan: A Thirty Year Vision .⁵¹

His conclusion following a Section 32 evaluation is that the purpose of the RMA is best met by declining/refusing the proposal and retaining the status quo.⁵²

In my submission, Mr Twigley's analysis is correct – particularly in light of the background and planning context evidence he has provided⁵³ – and taking into account the community vision for Oākura⁵⁴, and relevant statutory considerations in this case.

Having been the expert planning witness for the applicant at the Paddocks subdivision hearing in December 2010, he is well aware of the purpose of the consent notice imposed under Commissioner Tobin's decision – particularly in light of his review of the evidence from that case (and the decision itself). In my

⁵⁰ Supra, para 8

⁵¹ Supra, para 9

⁵² Supra, para 10

⁵³ Supra, paras 20-31

submission he is clearly correct – particularly so in the context of Mr McKie and Mr Bain’s evidence in that case.⁵⁵

In my submission there is a clear theme of permanent protection of the open landscape and rural character and amenities and productive values of the land in that evidence in order to avoid adverse effects thereon. No change of circumstances warrants the subsequent cancellation/negation of that protection - which will clearly lead to those adverse effects that were to be avoided.

In Mr McKie’s evidence, for example, he stated at paragraph 22,

“... we can and will **permanently protect and safeguard** these areas.... **by way of a consent condition/covenant...**”⁵⁶. (emphasis added).

At paragraph 31 Mr McKie, inter alia, gave evidence that,

“*The location chosen will maintain uniqueness and protect the views of Kaitake ranges, especially from SH45.... I note that protection of those views will not be achievable if we have to exercise the 4ha subdivision... The location chosen will **protect the open landscape giving rural appearances that will be preserved and maintained forever.***”⁵⁷ (emphasis added).

And, at paragraph 32 that,

⁵⁴ Supra, paras 32-35

⁵⁵ Supra, paras 45-61, and Annexures B, C and D

⁵⁶ Evidence Michael McKie, Paddocks Subdivision Hearing, 16 December 2010, para 22; Evidence Cameron Twigley, 25 June 2019, Annexure C (Evidence Michael McKie, Paddocks Subdivision Hearing, 16 December 2010 (ibid)

⁵⁷ Supra, para 31

“... the farm will sustain our family and future generations of farming families with a livelihood and career opportunities now and in the future.”⁵⁸

Mr Bain’s evidence also contained similar statements and themes, for example - at paragraph 5,

*“... we proposed to the applicant a subdivision scheme... **protecting three quarters of the McKie Farm from development. This approach safeguards rural character, as well as the rural approach to, and identity of, Oakura.**”⁵⁹*

As already noted by Mr Twigley⁶⁰, at paragraph 49 Mr Bain specifically provided,

“This Lot is not a ‘balance lot’. It is not left over land from subdivision. This allotment has been specifically created as part of a comprehensive development to maintain both productive uses of land as well as maintaining rural character. Furthermore, this approach maintains extensive views from SH45 up to the ONL... this lot will be protected from further subdivision, thereby ensuring rural character and values are maintained.”⁶¹

Further, at paragraph 50 Mr Bain went on,

*“In my opinion, the clustering of the ‘lifestyle’ allotments into the eastern portion of the site, and **the creation of a 66.5ha farm allotment which bounds rural land to the west is consistent with the character of***

⁵⁸ Supra, para 32

⁵⁹ Evidence Richard Bain, Paddocks Subdivision Hearing, 16 December 2010, para 5; Evidence Cameron Twigley, 25 June 2019, Annexure D (Evidence Richard Bain, Paddocks Subdivision Hearing, 16 December 2010 (ibid)

⁶⁰ Evidence Cameron Twigley, 25 June 2019, para 48

⁶¹ Evidence Richard Bain, Paddocks Subdivision Hearing, 16 December 2010, para 49; Evidence Cameron Twigley, 25 June 2019, Annexure D (Evidence Richard Bain, Paddocks Subdivision Hearing, 16 December 2010 (ibid)

*this area.... This scheme efficiently utilises the land..., and enables a productive dairy farm to operate. Therefore, in my view, the proposal is appropriate to the site and wider landscape context.*⁶²

And at paragraph 107 he noted,

*"The proposed development will lie between areas of existing development and if the 66.5 hectares of farm are protected, will avoid a sporadic and sprawling subdivision."*⁶³

Further, at paragraph 109, Mr Bain provided,

*"With regard to rural amenity, the proposal represents an holistic comprehensive design approach with an emphasis on sound environmental outcomes... Furthermore, this proposal will ensure that Oakura's identity, although growing, is retained by the preservation of views across the farms 1km of road frontage towards the amalgamated 66.5ha's of productive land. Also, views towards the Kaitake Ranges and the ONL are preserved as the dominant feature within the landscape."*⁶⁴ (Emphasis added).

In conclusion, at paragraph 117 he, inter alia, found,

*"If those carefully considered design controls and covenants are adopted then in my opinion the adverse effects of the proposed activity on the environment will be no more than minor."*⁶⁵ (emphasis added).

⁶² Supra, para 50

⁶³ Supra, para 107

⁶⁴ Supra, para 109

⁶⁵ Supra, para 117

In my submission paragraphs 13, 15, 17, 24, 27, 28, 32 and 35 of Mr Bain's evidence, for example, also reinforce my submissions as to the purpose of the consent notice condition – which aligned with the relevant policies and objectives of the District Plan – “... *that spaciousness and pleasantness are key descriptors of rural character and that this is primarily achieved through 'large' allotments and their legacy of facilitating the dominance of space over built form.*”⁶⁶

The approved Scheme Plan dated 02.12.10 included in Mr Twigley's evidence⁶⁷ in Annexure B (prepared by Mr Bain) also recorded “*LOT 29 66.5ha Protected Farm inclusive of QEII Bush Covenant, Key Native Ecosystem & 20m Esplanade Strip.*”

Legal submissions presented for the applicant (at the Paddocks subdivision consent hearing in December 2010) also offered, and reinforced, the permanent protection of Lot 29 from future subdivision - as recorded as follows;

“80% of the site is proposed to be permanently protected from further subdivision. That 80% of the site was purposely targeted to be protected so that the Kaitake Ranges would be kept safe from injury or harm in this context.”⁶⁸

“It should be noted that that 80% of the site proposed to be permanently protected includes “significant” archaeological and ecological components which fall within the criteria for assessing a landscape...”⁶⁹

⁶⁶ Supra, para 17

⁶⁷ Evidence Cameron Twigley, 25 June 2019

⁶⁸ Submissions of Counsel for the Applicant, SWA Grieve, Paddock's Subdivision Consent Hearing 16 December 2010, para 68. **Note:** a full copy of these submissions is available on request.

*“Importantly, the proposal will protect vast areas of the site – and even more importantly those sensitive parts of the site containing nationally “significant” and important features and values. **Not only will the proposal protect those areas in perpetuity for future generations, but it will significantly restore them and/or sustainably manage them into the future. Thus, the proposal will allow appropriate development in this environment, while protecting, maintaining and enhancing the values enshrined in the RMA and relevant planning documents.**”⁷⁰*

*“The permanent protection and restoration of the Western remnant, Eastern gully, esplanade strip riparian margins and nationally “significant” and important wetlands and habitat, the permanent protection and future management of the nationally “significant” and important pa site, **and the permanent protection of 80% of the site (and restoration of other riparian margins within that area) from further subdivision (respecting the Kaitake Ranges ONL) in this way fulfils ss 6(a), 6(b), 6(c), 6(d), 6(e) and 6(f), and ss 7(a), 7(aa), 7(b), 7(c), 7(d), 7(f), 7(g) and 7(i), and s. 8; and, is consequently consistent with the Oakura Structure Plan, the Regional Policy Statement and the relevant objectives and policies of the Plan. In my submission that result heavily informs the overall judgment that consent must be granted in the circumstances of this case.**”⁷¹*

*“Further, it is respectfully submitted that the proposal recognises the importance and retention of the open character of the site. The development is focused towards a relatively small and discrete area towards the eastern end while avoiding any development over the less populated western end of the site, **by protecting 80% of the site from further subdivision in perpetuity, which is specifically aimed to respect the views to, and backdrop of, the Kaitake Ranges.** In that way, it ultimately also respect the backdrop to and*

⁶⁹ Supra, para 69

⁷⁰ Supra, para 133

⁷¹ Supra, para 134

containment of Oakura provided by the Kaitake Ranges, and important entranceways, in the sense of arrival or departure, provide by SH45 approaching Oakura village. Overall, the proposal does meet the purpose of the RMA of sustainable management by enabling the community and the applicant to make provision for development of the site in a way which is sensitive to the natural environment in which it is situated."⁷²

(Emphasis added above).

Commissioner Tobin's Paddocks decision also emphasised the theme of protection of Lot 29 as follows:

"The condition with regard to future subdivision of the Lot 29, ... will ensure that open space is retained over the balance allotment. It is also noted that the applicant expressed the intention during the hearing of retaining this lot with a 'Protected Farm' status in the longer term, regardless of the zoning."

*"... these conditions will ensure development of the site in a way so as to remedy and mitigate potential adverse effects and achieve positive beneficial outcomes."*⁷³ (Emphasis added).

Mr Comber's speculative assertions at paragraph 176 of his evidence⁷⁴ are not accepted in this context.

It is respectfully submitted that to now cancel/negate that protection of the 66.5ha farm contained in Lot 29 must only logically lead to all of the adverse effects that Messrs McKie and Bain's above-mentioned evidence contended would be avoided, remedied or mitigated by its creation.

⁷² Supra, para 136

⁷³ The Paddocks Subdivision Consent Decision, Helen Tobin, Independent Hearings Commissioner, 8 March 2011, pp95-96; Officer's s. 42A report, 31 May 2019, Appendix 1

⁷⁴ Evidence Colin Comber, 17 June 2019

Even more so when, *“the paint is still drying”* on the Paddocks subdivision – with six lots still undeveloped – and newly built houses that people have barely moved into.⁷⁵

In my submission only one conclusion can be reached – if the consent authority grants the application to vary/cancel/negate the consent notice condition in the circumstances of this case (or approves the plan change, effectively achieving the same result) – then the integrity of the Paddocks subdivision (and the Council’s Paddocks subdivision consent decision, and the District Plan itself) would be severely undermined – resulting in significant adverse effects on the environment – being contrary to the objectives highlighted in Mr Twigley’s evidence – and, *“the developer would get to have their cake and eat it too”*.⁷⁶

Mr Twigley’s evidence that there has been no change in circumstances warranting the cancellation of that consent notice as being of no further value⁷⁷ must be accepted – and to come to a different conclusion would, in my respectful submission, be entirely inappropriate in the circumstances of this case.

As Mr Twigley notes, Ms McRae also considers there has been no adequate explanation as to the justification for cancellation of the consent notice condition.⁷⁸

It is submitted that Mr Twigley’s evidence must be given significant weight and be preferred in the circumstances of this case – as he is the only expert witness in this case, in my

⁷⁵ Evidence Cameron Twigley, 25 June 2019, para 59

⁷⁶ Supra, paras 56-72

⁷⁷ Supra, para 73

⁷⁸ Supra, para 61

submission (apart from perhaps Mr Kensington), who has appropriately and adequately analysed this issue in accordance with the relevant law, and with regard to the full relevant facts.

Mr Twigley's evidence goes on to consider the relevant statutory framework for the proposal and provides a robust evaluation in respect of same.⁷⁹

For all of the reasons provided, the application and the Officer's section 42A report have not adequately assessed the proposal to vary/cancel the consent notice – and he concurs with the significant concerns raised in the section 42A report about traffic, landscape and visual amenity issues (among other things). Mr Twigley is also of the view that there is insufficient information to make an informed judgement on the request.⁸⁰

Like Mr Kensington, he clearly concludes that in order to achieve the purpose of the RMA – the proposal must be refused.⁸¹

Lay Witnesses

8. Over the next 2-3 days you will hear from numerous submitters who will be providing their own evidence/submissions in opposition in their own right – and who will expand on their original submissions in further detail. All those people have opposed the proposal outright, and for very good reason; they are the Oākura community – who are highly concerned about the proposal, and its impacts on their lives and community.

⁷⁹ Supra, paras 74-173

⁸⁰ Supra, para 174

⁸¹ Supra, paras 8-10, 175-178; Evidence Pater Kensington, 25 June 2019, paras 4.3, 10.1

9. You have now heard from Messrs. Hislop and Pillette of the Kaitake Community Board (“KCB”). Their evidence/submission raises a number of compelling significant concerns for various reasons that I will not repeat.
10. Notably the KCB was also opposed to the Paddocks subdivision – which is still being completed by the applicant.⁸² While the KCB was disappointed with Commission Tobin’s relatively recent decision to grant the Paddocks subdivision consent, it was some consolation that the consent notice under consideration in this case was imposed (as offered by the applicant). That provided the KCB with some certainty moving forward that, at the very least, Lot 29 of the Paddocks subdivision would be protected for future generations - in terms of its rural character, productive values and amenity values.

Law/Legal Principles

Consent Notice Variation/Cancellation

11. It needs to be kept in mind in this case that the consent authority is examining not only the application for the plan change, but also the ‘elephant in the room’ – the application for variation/cancellation/negation of condition 4 of the consent notice under s 221 RMA (contained within the plan change application, as noted in Mr. Comber’s evidence⁸³).
12. In order to be able to approve the plan change request, the consent authority will also need to vary/cancel or effectively negate condition 4 of the s 221 consent notice against the

⁸² Evidence Cameron Twigley, 25 June 2019, para 59

⁸³ Evidence Colin Comber, 17 June 2019, para 172

property. That will, inter alia, entail the consent authority coming to a view that the adverse effects that will flow from the proposal, which the consent notice condition sought to avoid in the first place, are acceptable in the circumstances of this case in the context of achieving the purpose of the RMA.

13. Applications for variation of consent notices under s 221(3) clearly (as specified in s 221(3(A)) trigger a s 104 consideration. That is a discretionary exercise. I agree with Mr Twigley's evidence in this context - and consider that Mr Comber's analysis as a non-complying activity is incorrect (albeit it would be better for my clients if Mr Comber was correct and it was a non-complying activity assessment).⁸⁴ Mr Comber's evidence cannot be relied on, and Mr Twigley's must be preferred.
14. I also agree with Mr Twigley's view that the consent notice variation/cancellation/negation is not a "consequential amendment" in this context⁸⁵. The consent notice was, from 9 June 2014⁸⁶, registered against the title of the applicant's land, and is deemed to be an interest in the land⁸⁷. It was notice to the world at large – particularly to, for example, people buying lots from the applicant's Paddocks subdivision. Its status should not be diluted.
15. Mr Comber's evidence is superficial and cannot be relied on in this regard as it does not contain a full assessment under s. 104 RMA as required – rather it conflates the applications and endeavours to put the 'cart before the horse' and, in my submission, endeavours to sidestep the adverse effects of the

⁸⁴ Evidence Cameron Twigley, para 39

⁸⁵ Supra, paras 41-43

⁸⁶ Supra, Annexure A

⁸⁷ Section 221(4) RMA; as observed in *Green v Auckland Council*, supra, paras [75]-[77]

consent notice condition variation/cancellation/negation on the applicant's land and surrounding environment. Mr Twigley's evidence accordingly must be preferred (as he properly assesses these matters).

16. As a matter of common sense, an application for variation/cancellation necessarily entails an examination of the condition which is to be varied. Good planning practice should require an examination of the purpose of the consent notice, and an inquiry into whether some change of circumstances has rendered the consent notice of no further value – as observed by the High Court in Green v Auckland Council⁸⁸.

17. The Environment Court took a similar approach in Foster v Rodney District Council⁸⁹ when it concluded that the following criteria may still have some relevance under a discretionary consent procedure in considering whether to vary or cancel a condition of a consent notice:
 - (a) The circumstances in which the condition was imposed;
 - (b) The environmental values it sought to protect; or
 - (c) Pertinent general purposes of the RMA as set out in ss 5-8.

Section 104(1) and Part 2 RMA

18. Section 104(1) identifies the matters to which the consent authority must have regard, subject to Part 2;

[104 Consideration of applications

⁸⁸ [2013] NZHC 2364, [2014] NZRMA 1; at paras [128], [129]

⁸⁹ A123/09, at paras [7]-[10]

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

Part 2 RMA

19. "Subject to Part 2" – has recently been considered by the Court of Appeal in RJ Davidson Family Trust v Marlborough District Council⁹⁰. In short, the Court held that a consent authority must generally have regard to the provisions of Part 2.
20. Section 5 RMA is paramount:

5 Purpose

- (1) The purpose of this Act is to promote the sustainable management of natural and physical resources.
- (2) In this Act, **sustainable management** means managing the use, development, and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural wellbeing and for their health and safety while –

⁹⁰ [2018] NZCA 316

- (a) Sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and
- (b) Safeguarding the life-supporting capacity of air, water, soil, and ecosystems; and
- (c) Avoiding, remedying, or mitigating any adverse effects of activities on the environment.

21. The method of applying s. 5 still involves the well-known overall broad judgement set out in North Shore City Council v Auckland Regional Council⁹¹ – as noted more recently, for example, in: KPF Investments v Marlborough District Council⁹².
22. Application of that method in this case requires an overall broad judgement of whether the cancellation/negation of condition 4 of the consent notice – the purpose of which was to protect the site’s rural character, productivity values and amenity values – to ultimately enable the intensive urbanisation of the site at the foothills of the Outstanding Kaitake Ranges//National Park Landscape – will promote the sustainable management of natural and physical resources; recognising that the RMA has a single purpose.
23. Such a judgement allows for comparison of conflicting considerations and the scale or degree of them, and their relative significance or proportion in the final outcome⁹³ – provided it is recognised that the weight to be given to the relevant considerations must be carefully allocated by reference to the strong directions in ss. 6 to 8, and to any particularisation of

⁹¹[1997] NZRMA 59 (EnvC)

⁹²[2014] NZEnvC 152, at paragraph [202]

⁹³North Shore City Council, supra, at page 94

those in the statutory instruments from national policy statements down to district plans: KPF Investments⁹⁴.

24. The relevant ss. 6 - 8 considerations in this case, in my submission, are ss 6(a), (b) and (e) and ss 7 (a), (aa), (b), (c), (d), (f) and (g).
25. Amenity values can be assessed by the consent authority (in terms of assessing effects on the environment) - which must apply the law objectively in performing these functions: Gisborne District Council v Eldamos Investments Ltd⁹⁵.
26. The evidence for my clients (and the submitters in opposition generally) is that, viewed objectively, adverse amenity effects on the environment will be significant in this case. Expert evidence called for my clients reinforces those views objectively in a number of different ways.

Section 104(1)(a) RMA

27. Section 104(1)(a) requires the consideration of any actual and potential effects on the environment of the variation/cancellation/negation of condition 4 of the consent notice – to enable the land to be intensively subdivided/urbanised, developed and used by its rezoning from rural to residential/commercial.
28. Actual and potential beneficial positive effects must be considered, as well as actual and potential adverse effects.

⁹⁴Supra, at paragraph [202]

⁹⁵HC GIS CIV-2005-485-001241 [26 October 2005], Harrison J, at paragraph [42]

Adverse Effects

29. The emphasis of the applicant's property if changed to residential/commercial zoning and ultimately subdivided will inevitably change to urban rather than rural and productive uses.
30. There is no doubt that the existing consent notice was put in place in order to protect the rural character and amenity values of the environment and the productive use of the land.
31. Any variation/cancellation which provides for a reduction in those values, and the amount of land required to be utilised, would be a derogation of that provision. Accordingly, the adverse effects of the proposed variation/cancellation (and plan change) are more than minor.
32. It is submitted that such adverse effects would be significant, and represent an unwinding of one of the fundamental key mitigation measures which was critical in Commissioner Tobin's determination to grant the non-complying Paddocks subdivision consent on 8 March 2011.
33. Visual and amenity rural character adverse effects will be more than minimal (as will, for example, cumulative effects, traffic effects, stormwater effects and social and cultural effects).
34. It is submitted that rural character and amenity, however, is more than visual effects, but is influenced by the use people make of the land and surrounding environment, structures, formed accesses, traffic and noise etc.

35. The significant extra dwellings (and commercial buildings) and intensification of use contemplated by the proposal – combined with the already subdivided Paddocks land - will lead to significant adverse effects on that rural character and amenity. There will also be adverse servicing effects in roading, water supply and the like.
36. It is submitted that you must particularly have regard to the fact that condition 4 of the consent notice was put in place to protect the rural character and amenity values of the environment, and on-going productivity of the rural land, and to limit the area utilised for subdivision, use and residential/commercial development.
37. To permit the application for variation/cancellation/negation of the consent notice condition where there is no clear exception would, it is submitted, be to undermine the effectiveness of such consent notices.
38. The consent notice itself was put in place for the purpose of retaining the rural character and amenity values and productive use of the land now under consideration.
39. It is submitted that the purpose for which it was imposed remains as pertinent today as it did on 8 March 2011 when Commissioner Tobin determined that the non-complying Paddocks subdivision consent should be granted.
40. It is further submitted that the purpose of the existing consent notice is also to provide a high level of certainty to the public and owners as to the obligations contained within that notice –

as was the approach taken by the Environment Court in Foster⁹⁶.

41. It is intended to protect the environmental values of the rural character and amenity values and the soil reserve and the RMA's purposes including ss 5(2)(a) and (b), ss 6(a), (b) and (e) and ss 7 (a), (aa), (b), (c), (d), (f) and (g).
42. In Foster⁹⁷ the Environment Court considered that consent notices should not be the subject to the same possibilities for variation and change as for example, consent conditions.
43. In that case, the Court found that nothing had changed which justified changing the original consent notice, and that there was no proper basis for a variation of it.
44. In my submission you must clearly come to the same conclusions in the facts and circumstances of this case, based on the totality of the evidence for the submitters in opposition (including all of the evidence/submissions to be provided by individual submitters over the next couple of days).
45. Accordingly, it is respectfully submitted that you must refuse the variation/cancellation/negation of condition 4 of the consent notice - and plan change request (to convert the land to residential/commercial and provide for the ultimate subdivision of it) - given the adverse environmental effects that the consent notice sought/seek to avoid – which would become apparent should the land be subdivided, developed and used for residential purposes.

⁹⁶ Supra, at para [129]

⁹⁷ Supra, at para [130]

46. The cumulative effects and the sensitivity of the subject land to further subdivision is such that the effects would in their context be significantly adverse.

Cumulative Effects

47. One of the most significant adverse effects (which are numerous) of the proposal is its cumulative effect on rural character and amenities of the locality - which will arise as a result of the proposal in combination with other existing effects from the Paddocks subdivision.
48. The long-term cumulative effects of land fragmentation are a significant concern in this case – those land fragmentation effects will be irreversible.
49. Ultimately the residential/commercial urbanization of the land will adversely affect rural character and amenity and productivity values of the locality that the consent notice and the District Plan seek to protect - including cumulative effects that arise in combination with other effects regardless of scale and intensity.
50. The legal test for what are cumulative effects is detailed in the Court of Appeal's decision in Dye v Auckland Regional Council⁹⁸,

"The present issue is the way the word "effects" should be construed in ss 104 and 105 of the Act. Each section is concerned, in its relevant part, with

effects on the environment. In s 104(1)(a) the focus is on “any actual and potential effects on the environment of allowing the activity”... . The definition of “effect” includes “any cumulative effect which arises over time or in combination with other effects”. The first thing which should be noted is that a cumulative effect is not the same as a potential effect... A cumulative effect is concerned with things that will occur rather than with something which may occur, that being the connotation of a potential effect. This meaning is reinforced by the use of the following words “which arises over time or in combination with other effects”. The concept of cumulative effect arising over time is one of a gradual build-up of consequences. The concept of combination with other effects is one of effect A combining with effects B and C to create an overall composite effect D. All of these are effects which are going to happen as a result of the activity which is under consideration. The same connotation derives from the words “regardless of the scale, intensity, duration or frequency of the effect”.

51. Land fragmentation and rural character amenity value effects of the variation/cancellation of condition 4 of the consent notice (and the plan change and ultimate subdivision) will, in combination with similar effects of other rural residential development in the Paddocks subdivision locality, have a significant cumulative effect on the rural character and amenities of the locality; another step towards becoming urban character.

52. The nature of rural character is vulnerable to being lost by incremental changes; but this proposal is not relatively small in scale (quite the opposite) - and might be developed at a far faster pace than the applicant contends (as noted by the Officer⁹⁹) – and, even if staged, the nature of rural character is vulnerable to significant loss in this case.

⁹⁹ [2001] NZRMA 513 (CA) at para 38; see also in the context of cumulative land fragmentation and adverse effects on rural character the High Court's decision in Jennings v Tasman District Council HC Wellington CIV-2003-485-1654

53. The significant extra dwellings (and other buildings) ultimately contemplated by the proposal will add to the adverse effect of the adjacent Paddocks residential-rural dwellings (and other buildings and activities) to give a cumulative effect which is significantly more than minor; and, which will be significant in the long term, and irreversible.
54. It is submitted they add up to a major and significant erosion of the potentially productive land resource and of the character and amenity values of the rural area, abutting Outstanding Landscape, and Oākura village.
55. In forming a judgement about those adverse effects, it is submitted that you should be informed by the cumulative effects, and by the importance given by consent notice condition 4 and the District Plan to avoidance of fragmentation of rural land, and to protecting rural character and amenity values.
56. By its fragmentation effect and adverse effect on rural character and amenity values, the consent notice variation/cancellation (and ultimate residential/commercial subdivision, use and development) would be contrary to the relevant objectives and policies of the District Plan and RPS.
57. Taking those elements into account, it is submitted that the adverse effects on the environment of the consent notice variation/cancellation (and subsequent plan change and subdivision, use and development) do not qualify as lesser or comparatively small in importance – and that they are significantly more than minor.

⁹⁹ Officer's s. 42A report, 31 May 2019, para 13.32

58. The development that the proposal is intended to enable, would, in terms of the significant number of extra urban dwellings (and other buildings, including commercial), in combination with adverse effects of other residential-rural development and use in the area, such as at the Paddocks, clearly have an adverse effect giving a cumulative effect (on the fragmentation of rural land and degradation of rural character and amenities) which is significant.
59. This is a certain effect because it is dependent upon existing residential-rural development and the proposed future subdivision, residential/commercial use and development.
60. These issues were also canvassed at the Paddocks hearing in December 2010.
61. In the context of fragmentation, Mr Bain helpfully provided in his evidence,

*"... the test is: when do these elements become sufficiently widespread that visual clutter occurs which eventually fragments the scale of rural landscape and changes its character? The proposal will change the character of a relatively small area of the applicant's site where 'lifestyle' lots are located. **However, 80% of the site will remain as dairy farm and covenanted bush/wetland. This is equivalent in size to the entire Oakura township east of Wairau Road. In addition, within the area between the Oakura River and Timaru Stream, there are only two other pieces of land comparable in size...** On balance, the proposal limits the effect on*

*rural character to a specific location adjacent to a semi-urban area.*¹⁰⁰ (Emphasis added).

62. Conversely, in my submission, if Lot 29 is developed as proposed - it must follow that the proposal will lead to widespread adverse fragmentation effects which will change the rural landscape character; and the effects of the Paddocks subdivision will no longer be minor as Mr Bain contended they would be.

63. In terms of precedent and cumulative effects (in the context of the Paddocks subdivision) Mr Bain, inter alia, stated,

*“With regard to cumulative effect, this development does not represent a point in the local landscape where the balance is tipped and rural character is subsumed, in my view. The subdivision proposal will not result in cumulative effects that incrementally erode natural and rural character for the reasons above. **The development avoids cumulative effects by being located between areas of existing development rather than extending the zone of development over the farmland to be protected (as the 4ha subdivision would if implemented), and, also by occupying a relatively small area in relation to the extent of rural land that will be protected and consequently will remain part of the surrounding environment context (which will not occur if the 4ha consent is implemented).**”*¹⁰¹ (Emphasis added).

64. In my submission, Mr Bain was clearly of the view that the 4ha subdivision consent (which the applicant obtained prior to the Paddocks subdivision hearing, and utilised to assist to justify the Paddocks subdivision consent being granted) would result in

¹⁰⁰ Evidence Richard Bain, Paddocks Subdivision Hearing, 16 December 2010, para 70 - Evidence Cameron Twigley, 25 June 2019, Annexure D

cumulative effects that incrementally eroded natural rural character by extending the zone of development over the farmland (which was subsequently protected by the consent notice condition).

65. Logically, it must, therefore, follow that – if the 4ha subdivision would have resulted in such adverse effects in Mr Bain’s view – then the applicant’s proposal to urbanise that same farmland to yield some 330-399 subdivided lots¹⁰² can only result in significant adverse effects in this context; and must surely be the, *“point in the local landscape where the balance is tipped and rural character is subsumed.”*¹⁰³
66. It is submitted that Mr Bain essentially concurs with my view for the reasons noted above – and for the further reasons he provided in paragraph 79 of his 2010 Paddocks subdivision evidence; and, at paragraphs 100, 104 and 105 where he respectively stated,

“Mrs Buckland contends that the landscape will become almost urban as a result of the subdivision when viewed from this point and rural character is significantly diminished. In my view, this will not be the case due to the retention of the farmland that provides the rural foreground of this view and the mitigating effect of the existing vegetation and the proposed planting.”

“... Mrs Buckland agrees with our assessment that the most significant effect on rural character would be the entire

¹⁰¹ Supra, para 72

¹⁰² Evidence Cameron Twigley, 25 June 2019, para 19

¹⁰³ Evidence Richard Bain, Paddocks Subdivision Hearing, 16 December 2010, para 70 - Evidence Cameron Twigley, 25 June 2019, Annexure D

dismemberment and division of an 84ha productive landscape (as per the consented 4ha scheme). It is this fragmentation of the entire site that prompted our cluster design solution as currently proposed. Mrs Buckland and I seem to be in agreement that a completely fragmented site would have a significant adverse effect on rural character. (Emphasis added).

"... In her opinion there will be a loss of greenbelt around the ONL... In my view, the cluster subdivision protects a significant amount of that greenbelt/pasture..."

67. The proposal now before you will result in the above mentioned – *"entire dismemberment and division of an 84ha productive landscape"* – because, let's not forget, the applicant has already developed the Paddocks subdivision from that 84ha – and now effectively seeks to subdivide and develop the remaining 66.5ha Lot 29 protected by the consent notice. As Mr. Bain noted above, *"... a completely fragmented site would have a significant adverse effect on rural character."*

Positive Effects

68. Any beneficial effects the applicant asserts in respect of the future use and development of the [Lot 29] property, such as providing equestrian areas, in my submission should be discarded given that the consent notice registered against the title requires the land not to be subdivided while it is in the rural environment (thus keeping it rural (and for rural use) in any event).
69. Mr. Bain's contention that,

“The construction of a bund along SH45 creates a potential loss of character by reducing views of the OL, but provides a landscape benefit by reducing views of the urban development.”¹⁰⁴,

must be treated with similar caution in the context of beneficial effects in my submission.

70. Particularly in light of Mr. Comber’s evidence that, *“The ODP recognises that views from public places are a valuable community asset”¹⁰⁵* in the context of SH45.

Section 104(1)(b) RMA

71. All the relevant provisions applicable under s. 104(1)(b) have been canvassed by Mr. Twigley.¹⁰⁶
72. Given the clear direction of the District Plan (and RPS, and Part 2 RMA) and the various provisions relating to subdivision in the rural environment - and the maintenance and enhancement of amenity values - and preservation of the natural character of rivers and their margins (and protection of them from inappropriate subdivision, use and development) – and the protection of outstanding natural features and landscapes from inappropriate subdivision, use and development – it also must be concluded that endorsing the consent notice condition variation/cancellation would be contrary to the objectives and policies of the District Plan (and RPS); and, would undermine the Paddocks subdivision consent decision and the District Plan.

¹⁰⁴ Evidence Richard Bain, 17 June 2019, para 8

¹⁰⁵ Evidence Colin Comber, 17 June 2019, para 126

Section 104(1)(c) RMA

73. The effect of the negation of the consent notice condition (in whole or part) on the environment is an issue that is both relevant and reasonably necessary to determine the application in my submission (for reasons previously canvassed).

Plan Change

74. I am in general agreement with the Officer's analysis of the relevant matters to be considered (by the consent authority), including case law and statutory tests.¹⁰⁷ And, am also in general agreement with the Officer's outline of the request¹⁰⁸, and summary of its rationale as follows,

*"... the primary reason that the requestor seeks the rezoning of the site is... to deliver a continual supply of serviced residential lots long term..."*¹⁰⁹.

75. Approving the plan change request for that reason would result in significant adverse environmental effects in Mr Twigley's view (including in the context of the consent notice condition variation/cancellation/negation), and would not give effect to the National Policy Statement on Urban Development Capacity and the RPS; and would be inconsistent with Taiao Taioira, Oākura – A Growing Community – and the Kaitake Community Plan: A Thirty Year Vision .¹¹⁰

¹⁰⁶ Evidence Cameron Twigley, 25 June 2019, paras 64-72

¹⁰⁷ Officer's s. 42A report, 31 May 2019, paras 7.1-8.20

¹⁰⁸ Supra, para 3.3

¹⁰⁹ Supra, para 3.4

76. Mr Kensington shares Mr Twigley's view.¹¹¹
77. Mr Twigley's conclusion following a Section 32 evaluation is that the purpose of the RMA is best met by declining/refusing the proposal and retaining the status quo. The proposed policy and zoning changes are not the most appropriate method for achieving the objectives of the District Plan in terms of efficiency and effectiveness¹¹²
78. Mr Comber's assertion that, "*The land is... suitable and the urban expansion is logical.*"¹¹³ is not accepted by my clients (or the expert witnesses called by them); nor are the conclusions in his evidence¹¹⁴ accepted, or substantiated by the evidence in this case in my submission.
79. Based on all of that evidence, in my submission, the Council should not approve the requested change¹¹⁵, or any part of it, because it would not:
- (a) assist the Council to carry out its functions under s. 31 RMA so as to achieve the purpose of the RMA¹¹⁶; and would not,
 - (b) give effect to and be consistent with relevant provisions of the higher order national policy statements and planning instruments¹¹⁷; and would not,

¹¹⁰ Evidence Cameron Twigley, 25 June 2019, paras 9, 177

¹¹¹ Evidence Peter Kensington, 25 June 2019, paras 4.3, 10.1

¹¹² Evidence Cameron Twigley, 25 June 2019, paras 10, 177

¹¹³ Evidence Colin Comber, 17 June 2019, para 19

¹¹⁴ *Supra*, paras 181-187

¹¹⁵ Pursuant to clause 29(4) of Part 2 of the First Schedule to the RMA

¹¹⁶ S. 72, 74(1)(a) and (b) RMA

¹¹⁷ S. 75(3) and (4) RMA

- (c) be the most appropriate way to achieve the relevant objectives of the proposal, and District Plan having regard to other reasonably practicable options for achieving the objectives, the efficiency and effectiveness of the proposal in that regard, and the benefits and costs (of the environmental, economic, social and cultural effects) anticipated from implementation of the provisions of the proposal¹¹⁸.

Submissions and Conclusions

80. Each case must be considered and determined on its merits in light of the particular facts and circumstances.
81. The people and community of Oākura village and its surrounds do not share the applicant's "*vision*"¹¹⁹ for cancelling/negating condition 4 of the consent notice and changing the land from rural to residential/commercial zoning – to pave the way for a massive urbanization of that land – at the entire expense of the people and community of Oākura village and its surrounding environment – which will clearly result in significant adverse impacts on the people and community of Oākura village and its surrounding environment.
82. That is Mr. McKie's, no doubt lucrative, "*vision*" – but certainly does not reflect the "*vision*" of the people and community of Oākura village and its surrounds (as provided in their evidence/submissions).
83. That "*vision*" is also contrary to the integrity of Commissioner Tobin's Paddocks subdivision decision, the Paddocks

¹¹⁸ S. 32(1) and (2) RMA

¹¹⁹ Evidence Michael McKie, 17 June 2019, paras 15, 16

subdivision itself, the (applicant's self-offered) consent notice, the relevant statutory instruments in this case and Part 2 RMA.

84. The content of the District Plan should be guided by the purpose, principles, and requirements of the RMA - not the applicant's "*vision*" of what he thinks is an optimal use of the site.
85. The proposal does not respect and enhance the surrounding environment in my submission; quite the contrary –
- "The landscape and visual effects of the proposal are self evidently significant as rural changes to urban."¹²⁰*
86. Amenity values is a central issue which overlaps with the quality of the environment¹²¹.
87. It is submitted that the applicant has not sufficiently addressed the possible adverse effects, and ways to avoid, remedy or mitigate them, to the point where those effects are not an impediment to the granting/approving of the proposal.
88. The proposal will adversely affect cultural, social values, rural character, landscape values and amenities; and will result in significant adverse change to the character, appearance and amenity of the relevant environment.
89. Neither will the proposal achieve integrated management of the resources of Oākura.

¹²⁰ Evidence Richard Bain, 17 June 2019, para 12

¹²¹ See definitions of "Amenity values" and the "environment" in s. 2 RMA

90. The adverse effects that the proposal will bring, far outweigh the positive effects in the circumstances of this case; and cannot be adequately and appropriately mitigated (remedied or avoided)¹²², thereby not fulfilling s. 5(2)(c) RMA.
91. On the basis of the errors and information gaps noted in the applicant's evidence¹²³ - the conclusions reached in that evidence (including expert evidence) - regarding the scale and significance of effects - simply cannot be relied on.
92. Based on the whole of the evidence in this case, the proposal is clearly contrary to, and is inconsistent with, and will not give effect to, the provisions of the relevant statutory instruments to be considered. Accordingly, the plan change does not comply with ss 75(3)¹²⁴ RMA.
93. It is respectfully submitted that the purpose of the RMA and policy statements and superior documents are best met by declining/refusing the proposal.



SWA Grieve
Counsel for the Submitters

¹²² It should also be noted that many of the recommendations for mitigation in, for example, the Evidence of Cornelis Bevers, 17 June 2019 (see paras 14, 48), will not be enabled by the plan change provisions – rather they will still need to be secured through future applications for resource consent

¹²³ As highlighted in my client's evidence (including expert evidence called by my clients), the evidence for the submitter's in opposition generally and these submissions

¹²⁴ And potentially s. 75(4) RMA