

BEFORE THE CENTRAL HAWKE'S BAY DISTRICT COUNCIL
INDEPENDENT HEARINGS COMMISSIONER

UNDER The Resource Management Act 1991

AND

IN THE MATTER OF A NOTIFIED RESOURCE CONSENT APPLICATION FOR
SUBDIVISION TO CREATE 11 LOTS (8 RURAL LIFESYLE LOTS, 2
BALANCE LOTS, AND A LOT TO BE AMALGAMATED AS A
BOUNDARY ADJUSTMENT) AT MANGAKURI ROAD
(RM230016)

BETWEEN **SR & BJ WILLIAMS CHARITABLE TRUST BOARD**
Applicant

AND 24 Submitters

Central Hawke's Bay District Council
Consent Authority

AND

BRIEF OF EVIDENCE BY PHILIP ANTHONY MCKAY

INTRODUCTION AND QUALIFICATIONS

- 1 My full name is Philip Anthony McKay and I reside in Hastings.
- 2 I hold a Bachelor of Regional Planning with Honours from Massey University. I am a Member of the New Zealand Planning Institute, and a committee member of the Central North Island Branch of the Institute. In total I have some 31 years' experience as a practicing planner and have a Making Good Decisions Chair's certification.
- 3 I am currently employed as a Partner at Mitchell Daysh Limited planning consultants and have been employed by that company since April 2018. I was employed as a Senior Consultant Planner at Environmental Management Services Limited from September 2015 to April 2018. Prior to this, I held the position of Environmental Policy Manager with the Hastings District Council from January 2009 to September 2015.
- 4 I held various consents and policy planning roles with Hastings District Council from February 1996 to January 2009 and prior to that was employed as a planner by Wairoa District Council.

EXPERT WITNESS CODE OF CONDUCT

- 5 I confirm I have read the Code of Conduct for Expert Witnesses contained in the Environment Court Practice Note 2023. My evidence has been prepared in compliance with that Code and I agree to follow it when presenting evidence to the Hearing.
- 6 I confirm that my evidence is within my area of expertise except where I state that I am relying upon the specified evidence of another person, and I have not omitted to consider material facts known to me that might alter or detract from my expressed opinions.
- 7 I understand and accept that it is my overriding duty to assist the Commissioner in matters that are within my expertise as a planner. I understand that I have an overriding duty to assist impartially on the relevant

matters within my area of expertise and that I am not an advocate for the party that has engaged me.

SCOPE OF EVIDENCE

- 8 This evidence relates to resource consent application RM20230016 (“Application”) by the SR and BJ Williams Charitable Trust Board (“Applicant”) to Central Hawke’s Bay District Council (“Council”) for subdivision consent to create 11 lots, being 8 lifestyle lots, 2 rural balance lots and a lot to be amalgamated with an adjoining title, from Lot 2 DP 481291 (Record of Title: 674477).
- 9 That Application was received by Council on 24 February 2023. This evidence is provided in support of the Application.
- 10 Both the original Application and Assessment of Effects on the Environment (“Original Application”) (dated 24 February 2023), and the revised Application and Assessment of Effects on the Environment, after the removal of Lifestyle Lots 2 and 5 (which reduced the number of lifestyle lots in the subdivision from 10 to 8 and altered the sizes of the remaining lots) (dated 15 August 2023) (“the AEE”), were prepared by my colleague Moana Schoffa under my oversight and peer review, on behalf of the Applicant. I prepared the further information responses relating to planning issues and was the primary contact on behalf of the Applicant during the processing of the application.
- 11 I have read and reviewed all the documents appended to the Application AEE (original and revised proposals) and documents subsequently provided to the Central Hawke’s Bay District Council (“Council” or “CHBDC”) as further or additional information. These documents are listed in Table 1 of the Council’s Notification Report dated 10 April 2024, the same table is also listed in Appendix 1 “Draft Conditions of Consent – 4 June 2024” to the Section 42A Report for this hearing, therefore I do not relist them here.
- 12 I conducted a site visit on 16 September 2022.
- 13 In preparing this evidence I have reviewed the following documents:

- a) The '*Notification Report Pursuant to Sections 95A to 95F of the Resource Management Act 1991*' ("the Notification Report") prepared on behalf of the Council by Ryan O'Leary, Consultant Planner.
- b) The 24 submissions received on the application as listed in Appendix 3 of the s42A Report.
- c) The '*Section 42A Report of Ryan O'Leary – Planning*' ("the s42A Report").
- d) The '*Technical memorandum to an application for subdivision consent under the Resource Management Act 1991 in respect of 42 Okura Road, Elsthorpe*', from:
 - i. Erin Griffith, Principal, Landscape and Urban Design, Natural Capital
 - ii. Wayne Hodson, Senior Design Engineer (Three Waters), Stantec
 - iii. Chris Rossiter, Principal Transportation Engineer, Stantec NZ
 - iv. Lee Paterson, Senior Geotechnical Engineer, Stantec
- e) The briefs of evidence on behalf of the Applicant from
 - i. Lawrence Yule, Acting Chair of the SR & BJ Williams Trust
 - ii. Shannon Bray, Landscape and Visual Effects
 - iii. Simon Gabrielle, Three Waters Engineering
 - iv. George Eivers, Traffic Engineering
 - v. Tom Bunny, Geotechnical Engineering
 - vi. Tim Forde, Farm Forestry Expert

- 14 The purpose of my evidence is to provide an assessment of the planning related matters to this resource consent hearing. I do not seek to repeat the assessment provided within the s42A Report for those matters that I am in agreement with, while I identify the matters that I disagree with, including the overall conclusions of that report, and provide reasons for my disagreement.
- 15 My evidence is structured as follows:
- a) Description of the Subject Site and Application
 - b) Identification of Matters of Agreement and Disagreement with the Council Officers Report
 - c) Actual and Potential Effects on the Environment
 - d) Relevant Statutory Documents
 - e) Other Matters
 - f) Part 2 of the Resource Management Act
 - g) Summary and Conclusion
 - h) Suggested Conditions
- 16 Accordingly, the remainder of my evidence is set out under the topic headings listed above.

DESCRIPTION OF THE SUBJECT SITE AND APPLICATION

- 17 The 111.9ha irregular shaped subject site (“the site”) is fully described in section 2 of the AEE, it is also described in the s42A Report. To avoid duplication, I will not repeat those descriptions.
- 18 In brief, the Application seeks subdivision consent to create eight rural lifestyle lots, two rural balance lots, and a lot to be amalgamated with Lot 1 DP 25627 (38 Okura Road) as a boundary adjustment. No land use consents are being sought and the subdivision application is inclusive of the construction of the vehicle access ways to, and building platforms on, each of the proposed lifestyle lots, and for construction of the stormwater infrastructure to service

those vehicle access ways and building platforms, and of the 'Landscape Enhancement Zone' plantings within proposed Lot 11.

- 19 Again, the proposal is fully described in section 3 of the AEE, and separately described in the s42A Report (paragraphs 2.2 – 2.15). There is no need for me to repeat these descriptions as the s42A Report is accurate in this regard.
- 20 I note that the 'Previous Resource Consent History' set out in the s42A Report from paragraphs 2.22 – 2.31 has been extracted from the planning officer's decision recommendation report on RMA220210 (with some modification) and when referring to "this application" is actually referring to RMA220210 (which subdivided the subject site into Lot 1 of 54.174ha and Lot 2 of 57.726ha). I note this, as from the consent history it is important to understand that RMA220210 has been granted consent (on 24 February 2024) as has RMA220218 (on 24 May 2023), which was a 585m² boundary adjustment with 38 Okura Road. Lots 1 (inland) and 2 (coastal) of RMA220210 equate to Lots 12 and 11 respectively of the current Application (RM230016), while the 585m² Lot created for a boundary adjustment under RM220218 is Lot 13 of the current Application (RM230016). Lots 11, 12, and 13 of the Application are therefore already separately consented but are included on the Scheme Plan for the Application as subdivisions RM220210 and RMA22018 are yet to be completed to the issue of titles.

IDENTIFICATION OF MATTERS OF AGREEMENT AND DISAGREEMENT WITH THE COUNCIL OFFICER'S REPORT

Reasons for Consent and Activity Status

- 21 The site is zoned Rural Zone in the Operative Central Hawke's Bay District Plan ("ODP") and General Rural Zone in the Proposed Central Hawke's Bay District Plan ("PDP"). As the s42A Report points out there is also a small area of land accessing Okura Road that is zoned Township Zone in the ODP and Large Lot Residential (Coastal) in the PDP.¹ All eight of the proposed lifestyle lots are however within the Rural Zone / General Rural Zone land area, so it is

¹ S42A Report ((paragraphs 2.35 – 2.36).

the respective district plan provisions relating to those zones that are relevant to determining the status of the application and the focus of my evidence.

- 22 The eastern most half of the subject site is located within the Coastal Margin Area of the ODP and the Coastal Environment Overlay of the PDP, there is a slight difference in the inland boundary of these overlays between the ODP and PDP, which in my opinion is inconsequential to the assessment of this Application.
- 23 I agree that the s42A Report is correct in that the status of the Application is determined under the ODP pursuant to section 88A of the RMA as decisions on the PDP were not notified until 24 May 2023, some months after the application was lodged on 24 February 2023.
- 24 I agree with the assessment in the s42A Report that resource consent is required under the following District Plan rules:
- a) 9.9.4 Discretionary Subdivision Activities – i. Any subdivision which does not comply with any one or more Subdivision Performance Standards.
 - b) 9.9.4 Discretionary Subdivision Activities – ii. Any subdivision, within the coastal margin area of the Rural Zone ... as shown on the Planning Maps.
- 25 I note that this is consistent with the conclusion reached in the AEE². I do not however agree with the assessment in the s42A Report that Performance Standard 9.10(a) 'Minimum Lot Size' of the ODP is not met.³ The smallest of the proposed lifestyle lots is Lot 3 at 4,463m² comfortably exceeding the minimum 4,000m². Presumably the s42A Report assesses the 585m² Lot 13 (to be amalgamated with Lot 1 DP 25627) as not complying with Standard 9.10. Clause i of this standard however states:

Boundary Adjustments

Notwithstanding (a) above, where there are two or more existing lots which have separate Certificates of Title, new lots may be created by subdivision for the

² AEE (page 31).

³ S42A Report (paragraph 2.55).

purpose of an adjustment of the boundaries between the existing lots provided that no additional separately saleable lots are created, and that the resultant lots are not less than the smallest that existed before subdivision. The lots shall be contiguous except where separated by a road.

- 26 In my opinion the ‘boundary adjustment’ standard is complied with as the proposed amalgamation of Lot 13 and Lot 1 DP 25627 does not result in additional separately saleable lots, and the resultant amalgamated lot will be larger than each of the individual lots prior to the amalgamation, and the lots are contiguous. Therefore, as Lot 13 will form part of a complying boundary adjustment it is not required to comply with the 4,000m² minimum lot size in standard 9.10(a), by virtue of 9.10(a)(i).
- 27 The reason why discretionary activity resource consent is required under Rule 9.9.4(i) is due to the proposed accessways onto Willimas Road not being able to comply with the minimum required vehicle sightline distance for a 100km/hr speed limit road.⁴
- 28 Mr O’Leary states that he is not convinced that s91(1)(a) of the RMA is met.⁵ The consequence of the Council deciding that s91 is not satisfied would be the deferment of the hearing of the Application until any other necessary resource consent applications have been made, to provide a better understanding of the proposal.
- 29 The s42A Report considers whether resource consent is required under the Hawke’s Bay Regional Coastal Environment Plan 2014 (“RCEP”) and considers that Rule 163 may not be complied with, regarding constructed stormwater discharge into the Coastal Marine Area (“CMA”). I have discussed this matter with Mr Gabrielle, who advises that the constructed discharge to a soak pit in the CMA is only for stormwater runoff from the proposed access driveway to Lot 1, which does not involve an area greater than 2ha. Accordingly, in my opinion the permitted activity standards of Rule 163 will be able to be complied with and resource consent is not required under the RCEP.

⁴ Resulting in non-compliance with standards 9.10(g) and 8.5.2(f) of the ODP as pointed out in paragraph 2.55 of the S42A Report.

⁵ S42A Report paragraph 2.70.

- 30 The s42A report acknowledges that no resource consents are required under the Regional Resource Management Plan (“RRMP”).⁶
- 31 Paragraphs 2.58 and 2.66 of the s42A Report raise the question as to whether resource consents may be required under the National Environmental Standard for Freshwater 2020 (“NES-FW”). Because the various seeps and wet areas on the site are all within grazing pasture⁷ this matter has not previously been considered or raised. Nevertheless, one of the proposed dry ponds for stormwater detention involves discharge to a low point including a small area of wet ground northeast of proposed Lot 3.⁸ Upon receiving the s42A Report the Applicant has sought advice from the Hawke’s Bay Regional Council (“HBRC”) as to whether this would necessitate resource consent under clause 45C of the NES-FW so that a response can be tabled at the hearing. Based on a photograph of the existing vegetation in the location for one of the proposed dry ponds, HBRC have advised that it appears to be a natural inland wetland and that resource consent will be required under the NES-FW.
- 32 The Applicant now intends to engage an ecologist to provide advice on that wetland and potential enhancement options under the effects management hierarchy, to inform a resource consent application under regulation 45C of the NES-FW (Urban development – restricted discretionary activities). Should the ecological advice be not to proceed with a resource consent application or that such a resource consent would be difficult to obtain, then there are other technical engineering solutions available to place the proposed dry pond in a different location or to use other methods for the retention of stormwater in that particular catchment. I understand that the Applicant’s civil engineer Simon Gabrielle will be referring to these options in his evidence on stormwater management and can expand upon them at the hearing.

⁶ S42A Report paragraphs 4.144 – 4.146.

⁷ See definition of Natural Inland Wetland within the National Policy Statement for Freshwater Management 2020, Clause 3.21.

⁸ It is noted that there has been some electric fencing installed to protect newly planted trees from cattle grazing in this area since the project team completed site visits in September 2022, which has given the opportunity for the establishment of some wetland species amongst pasture that were not evident when those site visits were completed. The establishment of such plants was likely also aided by the high rainfall La Nina summer of 2022 / 2023.

33 If the advice is not to proceed with such an application, and this Application was granted conditional upon the implementation of the proposed stormwater management plans, then a variation to the conditions of the Application will be sought. Such a variation would be to enable stormwater retention in an alternative location that does not necessitate resource consent under the NES-FW, as is outlined in the evidence of Mr Gabrielle. Furthermore, the dry pond northeast of proposed Lot 3 is a discrete component of the proposed stormwater retention for the wider subdivision, contributing to an overall improvement in net runoff volumes, and specifically serving the catchment around proposed Lots 3 & 4 and associated accessways. As this is a discrete component of the overall proposal, with various alternative options available for retention of that part of the catchment, the inability to proceed with the proposed dry pond northeast of Lot 3 would not materially affect the subdivision proposal. I do not therefore consider that this issue necessitates the deferment of the hearing pursuant to section 91(1)(a) of the RMA.

Public Notification, Submissions, and Statutory Considerations

34 I agree that the s42A Report accurately describes the further information and public notification processes, and the 24 submissions subsequently received.⁹ I also agree that the statutory considerations for the determining the application are contained in sections 104 and 104B of the RMA.

Permitted Baseline

35 Regarding the discussion on 'Section 104(2) Permitted Baseline' in the s42A Report,¹⁰ I agree that there is no permitted baseline for a discretionary activity subdivision. However, I consider that there are specific effects resulting from the proposed subdivision that could also result from activities permitted under the PDP. For example, the natural character and landscape effects arising from future dwellings on the lifestyle sites created that Ms Griffith and Mr O'Leary raise issue with, could arise to some extent as a permitted activity

⁹ S42A Report paragraphs 3.1 - 3.6.

¹⁰ S42A Report paragraph 4.9.

with no subdivision. At present the 111.9ha subject site contains no dwellings. Rule GRUZ-R1(a) of the PDP permits:

i. One residential unit per site with an area less than 20 hectares, and...

iv. three additional residential units (i.e. a total of four) per site with an area of 100 hectares or greater, and

v. one minor residential unit per site: limited to a maximum gross floor area of 100m² (exclusive of garages, and verandahs less than 20m²); and...

36 Additionally, Rule GRUZ-R3 permits accessory buildings and structures to primary production activities; Rule GRUZ-R8 permits visitor accommodation activities (up to a maximum of 100m² floor area),¹¹ and Rule GRUZ-P9 permits ‘commercial activities not otherwise provided for’ (also up to a maximum of 100m² floor area).¹²

37 While it may be fanciful to expect 4 dwellings, one minor residential unit, visitor accommodation, and an additional form of commercial activity to be established on the subject site without any subdivision, it is not fanciful that two dwellings (with no floor area restriction) and one or two separate visitor accommodation units (with a maximum combined floor area of 100m²) could be established given My Yule’s evidence regarding the need to rehouse Mangakuri Station staff¹³ and the Trust’s intention to seek tourism opportunities.¹⁴ Nor is it fanciful for accessory buildings to either residential or primary production activities to be established on the site.

38 When considering potential adverse effects relating to landscape or natural character values, these PDP permitted activity rules should in my opinion be born in mind to the extent that the site could, in a non-fanciful scenario, have two residential buildings (with bulk and location restricted only by PDP

¹¹ Which Standard GRUZ-S1 limits to a maximum floor area of 100m² and requires at least one person resident on the site to carry out the activity.

¹² Also subject to Standard GRUZ-S1 as described above.

¹³ Statement of Evidence of Lawrence Yule (“SOE of L Yule”), paragraphs 4(b)&(c), 7(g), and 8(n),(o)&(p),

¹⁴ SOE of L Yule, paragraphs 5(g), 7(g)&(h), and 8(o)&(p).

height,¹⁵ Height in Relation to Boundary,¹⁶ and boundary setback¹⁷ standards) and one or more visitor accommodation units to a maximum floor area of 100m² established on it as a permitted activity. In my opinion it is appropriate to take into account the visual and landscape effects of these permitted activities, when assessing this Application, and that it is not appropriate to assess such effects with the existing unbuilt on site used as the baseline.

Areas of Agreement with S42A Report

39 I disagree with aspects of, and the conclusions reached in the planning assessment in the s42A Report, and the remainder of my evidence focusses on those matters of disagreement. Firstly, however I record my general agreement with the following aspects of the assessment in the s42A Report and therefore do not comment on these matters further:

- a) Effects on Productive Capacity and the loss of Highly Productive Land.¹⁸
- b) Reverse Sensitivity Effects.¹⁹
- c) Effects on the Land Transport Network.²⁰
- d) Servicing and Infrastructure Effects.²¹
- e) Natural Hazards.²²
- f) Construction Effects Including Earthworks.²³
- g) Effects on Archaeology and Historic Heritage.²⁴

¹⁵ GRUZ-S2 - maximum height of buildings is 10m.

¹⁶ GRUZ-S3.

¹⁷ GRUZ-S4 & S5.

¹⁸ S42A Report paragraphs 4.37 – 4.43.

¹⁹ S42A Report paragraphs 4.44 – 4.47.

²⁰ S42A Report paragraphs 4.73 – 4.82.

²¹ S42A Report paragraphs 4.83 – 4.97.

²² S42A Report paragraphs 4.98 – 4.111.

²³ S42A Report paragraphs 4.112 – 4.117.

²⁴ S42A Report paragraphs 4.118 – 4.122.

- h) Cultural Effects and Tangata Whenua Values.²⁵
- i) Effects on Coastal Processes.²⁶
- j) National Policy Statement for Highly Productive Land.²⁷
- k) Regional Resource Management Plan.²⁸
- l) Consistency with Objectives & Policies of Operative District Plan²⁹
- m) Section 106 of the RMA.³⁰

40 In the remainder of my evidence, I will seek to focus on areas of disagreement with the s42A Report.

ACTUAL AND POTENTIAL EFFECTS ON THE ENVIRONMENT (S104(1)(a))

41 I note that the 42A Report assesses the relevant provisions of the PDP in its assessment of the effects on the environment, with just a summary assessment provided under the heading ‘Plan and proposed plan – s104(1)(b)(vi)’. For ease of reference, I use the same headings as the s42A Report and comment on those matters discussed under corresponding headings.

Fragmentation Effects and effects of Land Use Change

42 I have comprehensively addressed this matter of fragmentation effects under the PDP in my letter to Kim Anstey and Ryan O’Leary dated 21 December 2023 and titled: ‘*Re: Response to S92 Request – RM230016 – Subdivision Consent, SR & BJ Williams Charitable Trust Board, Williams Road, Mangakuri*’ (“Further Information Response Letter”). I stand by the assessment provided in that letter and adopt it as my evidence. That is, except that the consented but unimplemented subdivision RM180095A, has since lapsed (on 10 April 2024) and can no longer be considered as part of the existing environment. This does not, however, have any bearing on my conclusion that the proposed

²⁵ S42A Report paragraphs 4.123 – 4.126.

²⁶ S42A Report paragraph 4.127.

²⁷ S42A Report paragraphs 4.130 – 4.140.

²⁸ S42A Report paragraphs 4.144 – 4.146.

²⁹ S42A Report paragraph 4.147.

³⁰ S42A Report paragraphs 4.161 – 4.165.

subdivision, with the conditions offered, does not have an adverse land fragmentation effect in the context of the PDP.

- 43 Mr O’Leary describes policy direction for the PDP *“that is implemented through the cascade of PDP provisions stemming from: the overarching Strategic Direction for the Rural Land Resource; the application of a range of rural zones (where particular environmental outcomes are sought); and the specific objectives, policies, rules and assessment matters applicable to rural lifestyle subdivisions within these rural zones, including the GRUZ.”*³¹ I agree that the policy direction for the PDP is established on that basis. As I set out below, my assessment of the cascade of PDP provisions results in a different conclusion as to the appropriateness of the proposed subdivision.
- 44 My Further Information Response Letter includes Tables 1 & 2, which provide a provision-by-provision assessment of the PDP Rural Land Resource Chapter, and General Rural Zone Chapter objectives and policies. For ease of reference, I attach that assessment as Appendix 1 to my evidence below.³²
- 45 On reviewing the cascade of provisions referred to by Mr O’Leary I consider that there is a clear direction from the Rural Land Resource Chapter to protecting highly productive land for rural production purposes (RLR-O1, RLR-O3, RLR-O4, RLR-P1, RLR-P2), along with more general direction for the protection of the primary production role and amenity of the rural land resource (RLR-O2, and RLR-P4), and protection of such activities from reverse sensitivity (RLR-P5).
- 46 Mr O’Leary identifies in paragraph 4.18 the most relevant objectives and policies to General Rural Zone subdivision. I note that of the provisions mentioned, RLR-O4 and RLR-P3 both include a greater emphasis for the protection of highly productive land, which the proposed subdivision does not affect. RLR-P5 relates to reverse sensitivity, and such effects are able to be appropriately avoided and mitigated by the proposed subdivision.³³ Of the specific subdivision provisions, RLR-O2 refers to protecting the rural land

³¹ S42A Report, paragraph 4.14.

³² Noting that the version attached as Appendix 1 of my evidence has removed previous references to the now lapsed subdivision consent RM180095A.

³³ As agreed by Mr O’Leary, see paragraph 4.47 of the s42A Report.

resource from inappropriate subdivision, while RLR-P3 refers to limiting lifestyle subdivision in the General Rural Zone. Neither provision directs avoidance of such subdivision, and I comment further on appropriateness and on how lifestyle subdivision will be limited by the proposal below.

- 47 Mr O’Leary includes an extract from the Principal Reasons for the provisions in the Rural Resource Strategy Chapter,³⁴ which includes the wording: *“The Plan aims to prevent large numbers of small holdings in the rural environment, particularly on highly productive land within the Rural Production Zone.”*
- 48 Again, that wording places an emphasis on protecting highly productive land, and in regard to the general rural environment, the direction is not seeking to avoid small holdings but rather to avoid large numbers of them, which equates to the reference in Policy RLR-P3 to *“limiting lifestyle subdivision in the General Rural Zone.”*
- 49 The direction set in the Rural Land Resource Chapter then flows into the specific PDP zone provisions. Such provisions in the General Rural Zone specifically relating to subdivision include Policy GRUZ-P8 seeking to limit rural lifestyle subdivision, which in turn is implemented by subdivision Rule SUB-R5 limiting the creation of lifestyle lots, to only one every 3 years provided a minimum balance area of 20ha is retained as a controlled activity. Where this condition is not met discretionary activity resource consent is required.
- 50 In contrast, the equivalent provisions of the Rural Production Zone include Policy RPROZ-P8 with wording to avoid rural lifestyle subdivision, and subdivision Rule SUB-R6 which only allows for a lifestyle site to be created as a controlled activity around an existing dwelling if the balance area is amalgamated with an adjoining title such that no additional titles result (amongst other conditions). Where these conditions are not met, such as would be the case with the creation of a stand-alone lifestyle lot with no amalgamation, non-complying activity resource consent would be required.

³⁴ S42A Report, paragraph 4.20.

- 51 In my opinion the cascade of PDP provisions from the strategic direction to the specific zones direct significantly more restrictive subdivision provisions for the Rural Production Zone as compared to the General Rural Zone. I consider that this direction indicates that rural lifestyle subdivision applications in the General Rural Zone should be considered on their merits including against the policies seeking to limit such subdivision. In contrast, such subdivisions in the Rural Production Zone are non-complying and the relevant policy directs that rural lifestyle subdivision be avoided.
- 52 In turning to the specific objectives and policies of the General Rural Zone, the s42A Report identifies GRUZ-O2 and GRUZ-P8 as being of particular relevance in respectively seeking that the predominant character of the General Rural Zone be maintained, and to limit rural lifestyle subdivision that results in fragmentation of the rural land.³⁵
- 53 The evidence of Mr Yule sets out the context of the Applicant's 1,500ha Mangakuri Station land holding, which is almost all located in the General Rural Zone.³⁶ Mr Yule explains how the Applicant is seeking to keep the property operating as a pastoral farm and that the proposed lifestyle site subdivision has been chosen as an option to achieve this in a way that does not disrupt day to day farming operations.³⁷ In taking a whole of farm view, in my opinion the proposed subdivision approach will better achieve objective GRUZ-O2 in maintaining the predominant character of the General Rural Zone compared to achieving the same number of lots by an as of right controlled activity subdivision approach over the Applicant's multiple titles. This is because in my opinion the clustering of the lifestyle sites into a low producing area of the farm, has a negligible effect on rural production potential, and minimizes the creation of new reverse sensitivity interfaces. Further to this, changes in rural character from residential development would be limited to a single coastal hill side location rather than being scattered over the various Mangakuri Station land holdings.

³⁵ S42A Report, paragraph 4.22

³⁶ SOE of L Yule, paragraph 2(a)-(g).

³⁷ SOE of L Yule, paragraphs 6(a)-(l) & 7(a)-(i).

- 54 Mr Yule explains how 8 rural lifestyle lots could be achieved by controlled activity³⁸ subdivisions in approximately 7 years, from two rounds of once every 3 year subdivisions over the Trust's four large coastal titles, and also outlines additional subdivision options that the Trust has available.³⁹ All of these titles include significant land areas outside of the PDP Coastal Environment Area (within which lifestyle lots would have a discretionary activity status) with elevated building platform options offering "stunning ocean views."⁴⁰ Had the Applicant been unprepared to offer restrictions on future subdivision rights as a condition, this information would be irrelevant as the described controlled activity subdivision options could take place in addition to the current 8 Lot proposal if consent were to be granted.
- 55 As stated by Mr Yule, the Trust is now prepared to go further in offering conditions to restrict future controlled activity subdivisions rights over their multiple records of title⁴¹ than what was set out in the Further Information Response Letter.⁴² The Trust has now offered to increase the no subdivision condition to applying for a period of 6 years to a period of 9 years. This recognizes that due to the time period required to lodge a subdivision consent application, achieve section 224 certification, and gain the new records of title, it may realistically take 9 years rather than 6 years to achieve two cycles of once every three-year subdivisions. Additionally, the Trust is now offering a no further lifestyle subdivision condition in perpetuity to apply by way of consent notice to proposed Lot 11, being the coastal balance lot.
- 56 In my opinion, this is a legitimate and effective approach to mitigating land fragmentation effects so as to achieve consistency with Objective RLR-O2, RLR-P3, and GRZ-P8,⁴³ by 'limiting lifestyle subdivision' over the whole of the Managakuri Station General Rural Zone property, to the equivalent number of lifestyle sites to what could be achieved as a controlled activity. In my opinion the proposed Application achieves a better planning outcome than what

³⁸ Or potentially restricted discretionary status if access and roading standards were unable to be complied with for example.

³⁹ SOE of L Yule, paragraph 8(r)-(t).

⁴⁰ SOE of L Yule, paragraph 8(t).

⁴¹ SOE of L Yule, paragraphs 9(d)&(e).

⁴² Dated 21 December 2023.

⁴³ As well as Assessment Matters in SUB-AM13 (5) and (6).

would be achieved by the Trust exercising their 1 in 3 year controlled activity subdivision rights, for the reasons explained in paragraph 53 above.

57 The nature of the subdivision restriction conditions offered have in my experience been accepted by the Hastings District Council, for subdivisions in their Rural Zone, which has the equivalent 1 in 3 year and 20ha balance area requirement subdivision rule⁴⁴ to Rule SUB-R5 of the PDP. If more than one lifestyle site is sought in a single application under the Hastings District Plan, the status defaults to non-complying, as opposed to discretionary in the PDP. I appreciate that this does not hold CHBDC to accepting the same approach, but I am drawing attention to such a condition as being deemed acceptable under similar district plan rural subdivision provisions by a neighbouring authority.

58 The Applicant therefore updates the wording of its offered subdivision restriction conditions from that set out in the Further Information Response Letter and further clarified in my e-mail to Ryan O’Leary dated 7 February 2024, to the following (where amendments to the previously offered conditions are shown in bold font):

Proposed Condition to limit fragmentation and achieve consistency with RLR-P3 and GRUZ-P8

*A. That a Consent Notice pursuant to Section 221 of the Resource Management Act 1991 shall be issued by Council and registered against the certificate of title to be issued for **Lot 12**.⁴⁵ The notice shall be registered at the consent-holder’s expense and shall read as follows:*

*That no lifestyle site can be subdivided from this site under Rule SUB-R5(1) of the Proposed Central Hawke’s Bay District Plan within a period of **9 (nine)** years from the date that this record of title is issued.*

B. That pursuant to section 108(2)(d) of the Resource Management Act 1991 the following land covenant in gross shall be registered on the Records of Title for Pt

⁴⁴ Hastings District Plan Rule SLD8, albeit that rule has the status of a Restricted Discretionary Activity Non-Notified. For example subdivision RMA20200400, where subdivision consent was granted as a non-complying activity to enable 4 lifestyle sites to be created in a cluster on one title. In that case the restriction was to prevent lifestyle subdivision on three neighbouring titles in the applicant’s ownership for a period of three years.

⁴⁵ The original condition offered in the Further Information Response Letter was intended to refer to Lot 12 being the inland balance Lot but referred to Lot 11 in error.

Lot 1 and Lot 2 DP 4588 (RT HB K2/396), Lot 1 & 2 DP 25804 and Lot 3 DP 481291 (RT 675091), and Lot 2 DP 582622 and Pt Lot 3 DP 4588 (RT 1090915) at the applicant's expense, and shall be demonstrated to have been imposed, prior to the issue of RMA s224(c) certification:

*That no lifestyle site can be subdivided from this site under Rule SUB-R5(1) of the Proposed Central Hawke's Bay District Plan for a period of at least **9 (nine)** years from the date this land covenant is registered on this record of title.*

C. That a Consent Notice pursuant to Section 221 of the Resource Management Act 1991 shall be issued by Council and registered against the certificate of title to be issued for Lot 11. The notice shall be registered at the consent-holder's expense and shall read as follows:

That no lifestyle site can be subdivided from this site from the date that this record of title is issued.

59 The plan identifying the location of the three adjoining and contiguous titles over which the covenants in B above are offered is included in the s42A Report as Figure 5, while the consent notice conditions in A and C above relate to proposed Lot 12 (the inland balance) and proposed Lot 11 (the coastal balance) of the current application respectively.

60 I consider that with the above offered conditions the proposed subdivision achieves consistency with RLR-O2, RLR-P3 and GRUZ-P8, and I therefore disagree with Mr O'Leary's conclusion that the proposal is contrary to those objectives and policies.⁴⁶ It follows that I also strongly disagree with Mr O'Leary's statements that "*the cascade of provisions under the PDP which provide direction on the scale and intensity of subdivision weigh against this subdivision proposal when assessing the application on its merits*" and "*that the granting of consent would significantly impair the Council's ability to limit rural lifestyle subdivision in the GRUZ in future.*"

61 My assessment is that the 'cascade of provisions under the PDP' provides direction that rural lifestyle subdivision applications in the General Rural Zone

⁴⁶ S42A Report paragraph 4.28.

should be considered on their merits as a discretionary activity, including against the objectives and policies seeking to limit such subdivision. These objectives and policies would generally be difficult for proposals creating multiple lifestyle sites from one property at one time to overcome. The proposed subdivision, however, involves a 1,500ha farming operation which includes 4 large coastal titles. The proposed subdivision takes a ‘whole of farm approach’ for achieving the sustainability of the pastoral farming operation in seeking the best option for minimizing adverse effects from the loss of productive land values and reverse sensitivity effects, while allowing some capital to be realized from lifestyle subdivision. With the conditions offered limiting future subdivision over three additional titles to the subject site and on balance Lots 11 and 12, the proposed subdivision in my opinion achieves consistency with the relevant objectives and policies of the PDP by limiting land fragmentation to being commensurate with what can be achieved as a controlled activity.

- 62 In my opinion granting consent to the proposed subdivision would not impair the Council’s ability to limit rural lifestyle subdivision in the General Rural Zone in the future. As I have explained, the proposed subdivision with the conditions offered limits lifestyle subdivision to the extent intended by the PDP. Furthermore, there are likely to be few, if any, other coastal properties in the same zone with the benefit of four large contiguous titles over which similar subdivision limitations could be offered. I return to this matter below when discussing precedent effects.

Landscape Character and Natural Character Effects

- 63 Regarding landscape and natural character effects I have read and considered the statement prepared by Ms Griffith. I rely on the evidence of Mr Bray in considering the matters raised by Ms Griffith. Mr Bray in his statement of evidence confirms that after considering the matters raised by the Council, in his assessment *“landscape, natural character, and visual amenity effects will be less than minor.”*⁴⁷

⁴⁷ Statement of Evidence of Shannon Bray (“SOE of S Bray”), paragraph 14.

- 64 In commenting on matters within my area of expertise I consider that Ms Griffiths in assessing the natural character of the site has not had regard to the built development that could occur as a permitted activity to that part of the subject site where the lifestyle sites are proposed. As I discuss in paragraphs 35 -38 above, General Rural Zone sites of over 100ha in area can establish 4 dwellings, and various other buildings, including up to 100m² floor area of visitor accommodation, as a permitted activity.
- 65 I do not consider it fanciful that two dwellings (with no floor area restriction) and one or two separate visitor accommodation units (with a maximum combined floor area of 100m²) could be established given My Yule's evidence. In particular, Mr Yule's statement regarding the need to rehouse Mangakuri Station staff and the Trust's intention to seek tourism opportunities. Nor is it fanciful in my opinion for accessory buildings to be established on the site. If consent were to be refused to the subdivision proposal, the building platforms investigated as part of this Application, which have been subject to significant geotechnical investigation and civil engineering design investment, could be utilized to accommodate dwellings and visitor accommodation as a permitted activity, without any design controls or landscape mitigation planting.
- 66 In my opinion it is also relevant that subdivision consent RM220210 has been approved⁴⁸ creating Lot 1 of 54.2ha and Lot 2 of 57.7ha, with Lot 1 being located outside of the Coastal Environment and Lot 2 being located within it. The approved building platforms for that subdivision correlate with that identified for proposed lifestyle Lots 7 and 10 of this current Application. I consider that it is appropriate to have regard to this consented but unimplemented subdivision when considering the existing environment and the potential effects on it from this current Application.
- 67 Ms Griffith comments that SUB-R5(1) only applies to the General Rural Zone outside of the Coastal Environment overlay, and that subdivision within the Coastal Environment would require resource consent under SUB-R5(10) as a Discretionary Activity.⁴⁹ I agree that is a correct statement but note that SUB-R5(1) is relevant insofar as it establishes the lifestyle site subdivision direction

⁴⁸ On 29 February 2024.

⁴⁹ Technical memorandum from E Griffith ("Memo of E Griffith"), paragraph 8.3.

for the underlying Genera Rural Zone. Ms Griffith then notes that it would take 24 years to achieve the proposed cluster of lifestyle sites in compliance with Rule SUB-R5(1). I disagree that it would take 24 years and note that both lifestyle Lots 9 and 10 of the proposed subdivision could be subdivided from Lot 1 of RM220210 (the inland lot), at the same time as other lifestyle lots are created from Lot 2 of RM220210 (the coastal lot). In my opinion however, it is more important to compare the proposed subdivision, with what could occur as a controlled activity⁵⁰ over the Trust's coastal properties over two cycles of subdivision under Rule SUB-R5(1). I refer to the map below paragraph 8(r) of Mr Yule's statement of evidence, which provides an example of where such sites could be located, which includes the ridges beyond the inland extent of the Coastal Environment. The landscape and natural character effects of the proposed subdivision are contained within a discrete area of Mangakuri Station and mitigated to a degree that Mr Bray considers to be minor, with the mitigations of the proposed landscape enhancement zone and design controls. With the controlled activity approach outlined by Mr Yule there would be only limited opportunity for conditions to be set under the PDP to mitigate landscape and visual effects.

68 In considering the significance of natural character and landscape values at Mangakuri at a district wide level, I note the PDP incorporates the findings of recent landscape and natural character assessments.⁵¹ When viewing the PDP planning maps it is evident that a significant extent of the CHBDC coastline has been identified as either comprising 'High Natural Character Areas', or 'Outstanding Natural Features', including from Kairakau north, north of Purerere, south of Aramoana, north and south of Blackhead, north and south of Porangahau Beach, and north and south of Whangaehu Beach. No such areas are however identified within vicinity of the subject site or Mangakuri Beach. The closest identified areas of High Natural Character and Outstanding Natural Landscapes to Mangakuri are those identified to the north of Kairakau.

⁵⁰ Outside of the Coastal Environment.

⁵¹ "Central Hawke's Bay District Outstanding Natural Landscape Assessment", Hudson Associates, May 2019, and '*Natural Character Assessment of the Central Hawke's Bay Coastal Environment*', Hudson Associates, January 2019.

69 I acknowledge that this does not mean that Mangakuri should accommodate further residential or lifestyle residential development. It does however mean that well considered subdivisions achieving the relevant objectives and policies of the PDP can be considered on their merits as a discretionary activity. This contrast to locations that are identified in the PDP for their landscape or natural character values which are directed to be preserved, or where development is directed to be avoided, by higher order planning instruments.⁵²

Effects on the Coastal Environment and Coastal Margin

70 Mr O’Leary refers to the relevant assessment matter to the Coastal Environment in the Subdivision Chapter of the PDP⁵³ and to relevant Coastal Environment Chapter objectives and policies in his assessment under this heading.⁵⁴ He relies on the advice of Ms Griffith in concluding that *“the adverse effects of the proposal on natural character within the coastal environment will be moderate and will not be sufficiently mitigated.”*

71 Mr Bray has reconsidered the effects of the proposal on the coastal environment in light of the Council’s assessment and has reaffirmed his opinion that natural character effects *“are very-low and likely to be positive in the longer term.”* I note in particular Mr Bray’s conclusion regarding the effect of the proposed dwellings on natural character values:⁵⁵

“I remain firm on my opinion that balancing the proposed vegetation outcomes against the establishment of dwellings, the balance swings in the favour of overall enhancement to the natural character values of this landscape.”

72 The AEE in assessing the proposal against the PDP Coastal Environment Chapter objectives and policies did not identify any areas of inconsistency and concluded that *“the establishment of a coastal vegetation framework will assist with enhancing the natural character of the coast in this area and in*

⁵² For example New Zealand Coastal Policy Statement (“NZCPS”) Policy 13(1)(i), Policy 15 (a), and s6(a) & (b) of the RMA.

⁵³ Being SUB-AM16.

⁵⁴ S42A Report, paragraphs 4.66 – 4.72.

⁵⁵ SOE of S Bray, paragraph 57.

*integrating the proposed built form into the landscape.*⁵⁶ In relying on the advice of Mr Bray, I stand by that assessment that the proposal, due to its proposed coastal vegetation planting, will contribute positively to the Coastal Environment, and as such will appropriately mitigate adverse effects on this environment.

Positive Effects

- 73 Mr O’Leary refers to the positive effects outlined in the AEE in his s42A Report and acknowledges these.⁵⁷ Based on the advice of Ms Griffith however he raises doubt about how the coastal revegetation is to be implemented. The draft conditions provided by Mr O’Leary include at Condition 62 a requirement for a Landscape Management Plan to be submitted for certification prior to earthworks or construction activities commencing. In my opinion such a condition, in association with conditions requiring implementation of the Landscape Management Plan would provide certainty of the proposed coastal revegetation. I also consider that proposed Condition 62 should reference the Wayfinder, *‘Mangakuri Station Proposed Subdivision - Landscape Concept Plan’*, dated 07/08/23.⁵⁸
- 74 The Applicant proposes that all planting identified in the Wayfinder Landscape Concept Plan within the coastal balance Lot 11, and the small portion of planting within the inland balance Lot 12 is required to be completed in accordance with the Landscape Management Plan prior to section 224 certification.
- 75 The areas of ‘Landscape Enhancement Zone’ planting shown on the Wayfinder Landscape Concept Plan within the boundaries of each of the lifestyle sites, being Lots 1, 3, 4, 6, 7, 8, 9, & 10 is proposed to be subject to a consent notice condition against each Lot requiring that planting is to be completed by the new owners. It is proposed that the consent notices would specify that the planting is undertaken in accordance with the Wayfinder Landscape Concept Plan, and the certified Landscape Management Plan, and completed prior to building consent being issued to establish a dwelling on

⁵⁶ AEE, page 80.

⁵⁷ Paragraphs 4.128 – 4.129.

⁵⁸ See AEE, Appendix D2, Sheet 01.

that lot. In my opinion such conditions will give certainty that the proposed Landscape Enhancement Zone planting will be implemented, while retaining some flexibility within the bounds of the Wayfinder Landscape Concept Plan, and the required Landscape Management Plan, for future owners to have choice over the species selection closest to their dwellings.

76 Further to the positive effects set out in the AEE, I consider that after having reviewed Mr Yule’s evidence there would be the following additional positive effects:

- a) In terms of social, economic, and cultural well-being –
 - i. The ability to reinvest in and retain Mangakuri Station as a viable farming operation, consistent with the PDP Rural Resource Strategy direction of retaining the productive capacity of the rural land resource.
 - ii. The ability for the Trust to provide charitable distributions.
 - iii. Development of an ongoing relationship with the Kairakau Lands Trust in identifying and protecting archaeological sites.

RELEVANT STATUTORY DOCUMENTS

New Zealand Coastal Policy Statement 2010 (“NZCPS”)

77 Relying on the advice of Ms Griffith, Mr O’Leary concludes that the proposed subdivision is in conflict with Objective 2 and Policies 13, 14 and 15 of the NZCPS, but acknowledges consistency with other objectives and policies.⁵⁹

78 As summarized in the AEE,⁶⁰ Objective 2 and Policies 13 – 15 collectively seek to:

⁵⁹ S42A Report, paragraph 4.143.

⁶⁰ AEE, page 63.

- a) Preserve and enhance the natural character of the coastal environment and to protect it from inappropriate subdivision, use and development;⁶¹
- b) Protect natural features and natural landscapes of the coastal environment from inappropriate subdivision, use and development;⁶²

79 Relying on the landscape and natural character advice of Mr Bray already discussed, I consider that the proposed subdivision is appropriate, as overtime with its plantings, it will enhance the natural character of the coastal environment and will not significantly adversely affect any natural features or landscapes associated with coastal environment. Accordingly, I consider that the proposed subdivision can achieve general consistency with the objectives and policies of the NZCPS.

Plan (ODP) and Proposed Plan (PDP)

80 Whether the subdivision proposal achieves consistency with the ODP is not in contention. In regard to the PDP Mr O’Leary concludes *“that granting subdivision consent would be counter to the communities expectations and would compromise the integrity of the PDP.”*⁶³ For the reasons stated in my paragraphs 58 – 62 above, I strongly disagree with Mr O’Leary on this matter and consider that with, the proposed subdivision limitation conditions, general consistency will be achieved with the objective and policies of the PDP. In reaching this conclusion I also rely on the assessment of relevant PDP objectives and policies in the AEE,⁶⁴ and on the assessment tables attached as Appendix 1 of my evidence.

OTHER MATTERS (S104(1)(c))

Precedent and Integrity of the Proposed District Plan

⁶¹ Objective 2 and Policies 13 and 14 of the NZCPS.

⁶² Policy 15 of the NZCPS.

⁶³ S42A Report paragraph 4.151.

⁶⁴ See pages 71 – 88.

- 81 Mr O’Leary considers that the proposed subdivision will have a detrimental effect on the achievement of the PDP’s new policy direction if granted.⁶⁵ Again, I strongly disagree with Mr O’Leary on this point.
- 82 My assessment is that the proposed subdivision can achieve general consistency with the objectives and policies of the PDP, including those seeking to limit lifestyle subdivision in the General Rural Zone. Issues of precedence and district plan integrity do not arise in granting consent to a discretionary activity that is generally consistent with the objectives and policies of the relevant district plan.
- 83 If the Commissioner finds that there is some tension and inconsistency with one of more of the relevant PDP objectives and policies, in my opinion granting consent to this subdivision would not create an adverse precedent effect due to the uniqueness of this proposal, resulting from the combination of the following factors:
- a) The Application was prepared and lodged under the ODP and prior to decisions on submissions on the PDP and achieves consistency with the relevant provisions of the ODP. Although greatest weight should now be placed on the policy direction of the PDP, the ODP is still relevant to the assessment of this application. Any current or future applications being received by CHBDC will not be able to place any reliance on the ODP.
 - b) The subject site is unique in comprising of a 1,500ha General Rural Zone coastal farm, including four separate and contiguous coastal titles exceeding 100ha in area. The conditions proposed to limit land fragmentation by lifestyle subdivision to the equivalent of what can be achieved by a controlled activity under the PDP would not likely be available to any other coastal properties in the same zone.
 - c) Other characteristics of the site which when combined become difficult to replicate include:

⁶⁵ S42A Report paragraph 4.142.

- i. Location immediately adjacent to a Large Lot Residential (Coastal) Zone, and therefore an existing level of residential development.
- ii. Location outside of any identified 'High Natural Character Areas', 'Significant Amenity Features', Significant Natural Areas', or 'Outstanding Natural Landscapes'.
- iii. Contributions to an improvement in natural coastal character over time resulting from the proposed 'Landscape Enhancement Zone' plantings, and as confirmed by expert landscape evidence.
- iv. Confinement of lifestyle sites to land of low rural productivity being LUC6 and LUC7 category land, and the avoidance of any LUC1 – LUC3 highly productive land.
- v. The ability to locate and buffer the proposed lifestyle sites to avoid reverse sensitivity effects on production land.

PART 2 OF THE RESOURCE MANAGEMENT ACT

84 In my opinion, given the case law from the Davidson Family Trust Court of Appeal decision, there is no need to refer to Part 2 because doing so would not add to the evaluative exercise.

85 If the Commissioner considers it appropriate to have recourse to Part 2, it is my opinion that the proposed subdivision achieves the sustainable management purpose of the RMA as it will enable the Trust and future owners to provide for their social, cultural, and economic well-being, and for their health and safety. Furthermore, this can be achieved while appropriately avoiding, remedying, or mitigating any adverse effects on the environment; while appropriately providing for the matters listed in section 6(a), (d), (e), (f), and (h); having regard to the matters in section 7(b), (c), (f), (g), and (i); and taking into account the principles of Te Tiriti o Waitangi (section 8).

SUMMARY AND CONCLUSION

86 The Application seeks subdivision consent to create eight rural lifestyle lots, two rural balance lots, and a lot to be amalgamated with Lot 1 DP 25627 (38

Okura Road) as a boundary adjustment. No land use consents are being sought and the subdivision application is inclusive of the construction of the vehicle access ways to, and building platforms on, each of the proposed lifestyle lots, and for construction of the stormwater infrastructure to service those vehicle access ways and building platforms, and of the 'Landscape Enhancement Zone' plantings within proposed balance Lots 11 and 12.

- 87 Significantly, the Applicant proposes conditions to limit its controlled activity subdivision rights on the inland balance, Lot 12, and on three separate but contiguous large coastal titles, with the effect of preventing any lifestyle subdivision of that land for a period of 9 years. A consent notice is proposed on the coastal balance Lot 11, preventing any further lifestyle site subdivision of that lot in perpetuity. With these conditions I consider that the proposed subdivision will be generally consistent with and not contrary to, those specific rural subdivision related objectives and policies of the Rural Land Strategy and General Rural Zone Chapters of the PDP. That is, namely Objective RLR-O2, Policy RLR-P3, and Policy GRUZ-P8, which seek to limit lifestyle subdivision in the General Rural Zone.
- 88 The proposed subdivision has been designed with the expert landscape input of Mr Bray, with the proposed lifestyles sites and proposed landscape planting concept designed to avoid, remedy, and mitigate landscape, natural character, and visual effects, and over time to result in an enhancement of natural coastal character values through the proposed Landscape Enhancement Zone plantings.
- 89 There is agreement with the s42A reporting officer and Council experts that the proposed subdivision is able to appropriately mitigate natural hazard, geotechnical, three waters servicing, and transportation network effects through the imposition of appropriate conditions.
- 90 I acknowledge that 24 submissions have been received and that 23 of those submissions oppose the proposed subdivision. I have reviewed the proposed submissions and acknowledge that they raise numerous concerns about the subdivision and the potential adverse effects that may arise from it. In my opinion, based on the Applicant's and the Council's expert advice (excepting

planning and landscape advice), those potential effects are in RMA terms, able to be appropriately avoided, remedied or mitigated.

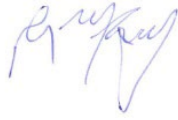
- 91 In responding to the concerns raised by the Council's planning and landscape experts in my evidence I consider that I have also responded to the concerns raised in the submissions on those issues as relevant to the RMA.
- 92 Accordingly, I consider that the above assessment demonstrates that consent is able to be granted to this subdivision proposal, if the Commissioner is minded to do so, under section 104B of the RMA.

SUGGESTED CONDITIONS

- 93 I acknowledge, and am appreciative of, the Draft Conditions prepared by Mr O'Leary as Appendix 1 to his s42A Report. Time has not allowed me to complete a comprehensive review of these conditions with suggested track changes. I propose, on behalf of the Applicant, that those conditions will be reviewed in detail by the Applicant's experts prior to the hearing and that a track change version of the Draft Conditions will be tabled at the hearing.
- 94 I have identified in paragraphs 73 – 76 above, amendments proposed to the 'Land Fragmentation Mitigation' and 'Land Covenant' Conditions⁶⁶, including a new condition applying to the coastal balance Lot 11, and additional landscape implementation conditions.
- 95 I also note that both Mr Gabrielle and Mr Eivers propose amendments to the Draft Conditions in their statements of evidence. These recommended changes will be included in the track change version of the Draft Conditions to be tabled at the hearing.

⁶⁶ Conditions 60 and 61 of Appendix 1 to the s42A Report.

96 I am happy to answer any questions at the hearing.

A handwritten signature in blue ink, appearing to read 'P A McKay', with a stylized, cursive script.

P A McKay

11 June 2023

Appendix 1

Assessment of PDP Rural Land Resource and General Rural Zone Objectives and Policies

Table 1 – Assessment of Rural Land Resource Chapter Objectives and Policies

PDP Provision	Assessment of RM230016
<p>RLR-O1</p> <p><i>The productive capacity of the District's rural land resource, particularly the District's highly productive land, is maintained.</i></p>	<p>Seven of the eight proposed lifestyle sites are located on LUC7 land (non-arable land with severe limitations to use under perennial vegetation), and the eighth is on LUC6 land (non-arable land with moderate limitations to use under perennial vegetation). Accordingly, the proposed subdivision will not result in the loss of any highly productive land from primary production, and the clustered lifestyles sites located in a corner of the wider farm on low producing pasture, also minimises the loss of productive land from Mangakuri Station. Nor will the subdivision reduce productive capacity by reverse sensitivity effects as the applicant is the owner of all the agricultural land adjacent and near to the proposed lifestyle lots, including the land on the northern side of Williams Road. This land only has potential for low intensity pastoral grazing, which is the current use, or production forestry. Such productive uses have a significantly lower susceptibility to reverse sensitivity effects from lifestyle subdivision than more intensive uses such as cropping, horticulture or dairy farming.</p>
<p>RLR-O2</p> <p><i>The primary production role and associated amenity of the District's rural land resource is retained, and is protected from inappropriate subdivision, use and development.</i></p>	<p>As explained for RLR-O1 above, the proposed subdivision will have little impact on the primary production role of the District's Rural land resource. Regarding retaining and protecting the amenity of the rural land resource, the expert landscape advice from Wayfinder⁶⁷ is that effects on appreciable rural amenity are largely avoided. On this basis I consider that the proposed subdivision is generally consistent with RLR-O1 and RLR-O2.</p>
<p>RLR-O3</p> <p><i>The District's highly productive land is protected from further fragmentation.</i></p>	<p>As explained above, the part of the site where the lifestyle lots are proposed is not highly productive land, and for the most part has a Land Use Capability classification of LUC7. Accordingly, this objective is not relevant to the proposed subdivision.</p>
<p>RLR-O4</p> <p><i>Residential and other activities that are unrelated to primary production are directed to locations zoned for those purposes and that</i></p>	<p>Residential use of the eight lifestyle sites proposed can be anticipated, however such use will not be situated on highly productive land.</p>

⁶⁷ "Proposed Residential Subdivision, Mangakuri (RM230016) Addendum to Landscape, Natural Character & Visual Effects Rural Amenity Assessment", and dated 22 September 2023.

<p>are not situated on highly productive land.</p>	
<p><i>RLR-P1</i> <i>To identify the highly productive land centred in and around the Ruataniwha and Takapau Plains and surrounding Waipukurau, Waipawa and Otane within a specific rural zone – the Rural Production Zone.</i></p>	<p>The subject site is zoned General Rural Zone and is away from the locations specified in this policy to be included in the Rural Production Zone.</p>
<p><i>RLR-P2</i> <i>To avoid unplanned urban expansion onto the District's highly productive land in the Rural Production Zone.</i></p>	<p>As above, the proposed subdivision is not within the Rural Production Zone.</p>
<p><i>RLR-P3*</i> <i>To minimise fragmentation of the District's rural land resource through directing lifestyle subdivision to the Rural Lifestyle Zone and limiting lifestyle subdivision in the General Rural Zone and, particularly, in the Rural Production Zone.</i></p>	<p>In limiting lifestyle subdivision in the General Rural Zone this policy is implemented through rule SUB-R5 which enables the creation of one lifestyle site every three years in the General Rural Zone, provided that a minimum balance area of 20ha is retained. The proposed subdivision could be considered inconsistent with this policy insofar as it seeks consent for eight lifestyle sites in a single application rather than, the one lifestyle site provided for as a controlled activity by SUB-R5. As explained above however, the subdivision must be assessed on its merits as a discretionary activity and was planned and lodged in compliance with the equivalent subdivision rules of the ODP Rural Zone. As set out in the Wayfinder assessment⁶⁸, through rule SUB-R5 it would be possible to create a fragmented development whereby singular lifestyle sites are widely scattered, bearing in mind that Mangakuri Station comprises of multiple separate General Rural Zone titles of greater than 20ha in area. In Mr Bray's opinion⁶⁹ regarding fragmentation, the proposed subdivision "<i>is best practice as it considers development in a holistic and planned way and allows for the incorporation of appropriate mitigation measures and achievement of longer-term positive landscape and environmental outcomes.</i>" Nevertheless, to reduce the potential inconsistency with this policy and the equivalent General Rural Zone policy GRUZ-P8 in regard to fragmentation, a condition is offered to covenant three of the neighbouring Managakuri Station titles and to consent notice balance Lot 11 to prevent any further lifestyle site subdivision from those titles for a period of 6 years.⁷⁰ Accordingly, the creation of the 8 lifestyle sites in this single application would be offset by removing the development rights of Rule SUB-R5 from 4 records of</p>

⁶⁸ "Proposed Residential Subdivision, Mangakuri (RM230016) Addendum to Landscape, Natural Character & Visual Effects Rural Amenity Assessment", and dated 22 September 2023.

⁶⁹ Ibid.

⁷⁰ Now extended to 9 years.

	title for two times three yearly cycles. ⁷¹ In this way fragmentation of the rural land resource would be minimised to the extent provided for by the PDP, therefore achieving consistency with this policy.
<p><i>RLR-P4*</i></p> <p><i>To provide for non-primary production activities that complement the resources of the rural area, provided they do not compromise primary production, particularly in the Rural Production Zone and associated rural character and amenity in all rural zones, recognising that some non-primary production activities have an operational or functional need to locate in a rural area.</i></p>	The future dwellings on the proposed lifestyle sites are non-primary production activities but have been designed to complement and not compromise the surrounding Mangakuri Station. Also as assessed by Wayfinder ⁷² , effects on appreciable rural amenity are largely avoided. The Wayfinder assessment also identifies that irrespective of any zoning the site has a strongly identifiable coastal character, which will be strengthened by the clustered built form anchored with coastal appropriate vegetation. Accordingly, the proposed subdivision is considered generally consistent with this policy.
<p><i>RLR-P5</i></p> <p><i>To enable primary production and related activities to operate in rural areas in accordance with accepted practices without being compromised by other activities demanding higher levels of amenity.</i></p>	This policy relates to reverse sensitivity, and the lifestyle lots resulting from the proposed subdivision will be largely buffered by the proposed plantings on balance Lot 11, while the surrounding farmland is all part of Mangakuri Station and owned by the applicants and used for pastoral farming. Given this, the proposed subdivision will not generate reverse sensitivity effects and can be considered consistent with this policy.
<p><i>RLR-P6*</i></p> <p><i>To recognise the value of reliable stored water resources and associated infrastructure where it provides increased water availability and security for maintaining and enhancing the productive capacity of the rural land resource.</i></p>	Not applicable to this application.

** Provisions subject to appeal at the time of writing, December 2023.*

Table 2 – Assessment of General Rural Zone Chapter Objectives and Policies

PDP Provision	Assessment of RM230016
<p><i>GRUZ-O1</i></p> <p><i>The General Rural Zone is predominantly used for primary production activities (including intensive primary production) and ancillary activities.</i></p>	As explained for RLR-O1 and RLR-O2 above, the proposed subdivision will have little impact on the predominant use of the Rural Zone for primary production and ancillary activities as it is confined to a cluster of lifestyles sites in an unproductive corner of Mangakuri Station. It is therefore generally consistent with objective GRUZ-O1

⁷¹ The consent condition now offered by the Applicant has extend this proposed no subdivision consent notice and covenant to 9 years, and added an additional consent notice to prevent any further lifestyle lot subdivision of Lot 12.

⁷² "Proposed Residential Subdivision, Mangakuri (RM230016) Addendum to Landscape, Natural Character & Visual Effects Rural Amenity Assessment", and dated 22 September 2023.

<p>GRUZ-O2</p> <p><i>The predominant character of the General Rural Zone is maintained, which includes:</i></p> <ol style="list-style-type: none"> 1. <i>overall low-density built form, with open space and few structures;</i> 2. <i>a predominance of primary production activities and associated buildings, such as barns and sheds, post-harvest facilities, seasonal workers accommodation, and artificial crop protection structures and crop support structures, which may vary across the district and seasonally;</i> 3. <i>the sounds, smells, and traffic associated with primary production activities and established rural industries, anticipated from a working rural environment;</i> 4. <i>existing rural communities and community activities, such as rural halls, reserves and educational facilities;</i> 5. <i>a landscape within which the natural environment (including farming and forest landscapes) predominates over the built one; and</i> 6. <i>an environmental contrast and clear distinction between town and country (including a general lack of urban infrastructure, such as street lighting, solid fences and footpaths).</i> 	<p>This policy defines the character of the General Rural Zone that it seeks to maintain. Over the wider area of the subject site general consistency with GRUZ-O2(1),(2),(3) and (5) will be achieved as balance Lots 11 and 12 (totalling some 106ha of the 111.9ha parent site) are of a size that the pastoral farm will continue to operate over, with a character of open space, few structures, grazing animals and their sounds and smells, and a landscape within which the natural environment predominates over the built one. As stated in the Wayfinder assessment⁷³:</p> <p><i>“the wider farm on the inland side of the coastal ridgeline reinforces the rural amenity. This wide expanse of farmland country is part of a long sequence of productive farm land...This part of the landscape exudes a strong sense of productive capacity ...</i></p> <p><i>By keeping development on the coastal side of the ridgeline, the more traditional rural amenity of the inland farm is retained. The proposal speaks to and enhances its location on the coastal fringe, visible only when a person travels past the threshold of the rural landscape.”</i></p> <p>The clustering of the proposed lifestyles sites together on the coastal side of the ridge therefore generally maintains the character of the General Rural Zone.</p> <p>Clause (4) applies more to the macro definition of General Rural Zone character, as an individual site cannot be expected to contain a rural hall, school, or reserve.</p> <p>In terms of Clause (6) no urban infrastructure, such as street lighting, solid fences and footpaths are proposed, and the future built form will be contained within the proposed extensive vegetation framework.</p> <p>The proposed subdivision is therefore considered to be generally consistent with objective GRUZ-O2.</p>
<p>GRUZ-O3</p> <p><i>Activities are managed to ensure rural character and amenity and, where applicable, the natural character</i></p>	<p>In this case the natural character and amenity values of the coastal environment are applicable and will be maintained and enhanced by the proposed subdivision. As set out in the August update of the</p>

⁷³ “Proposed Residential Subdivision, Mangakuri (RM230016) Addendum to Landscape, Natural Character & Visual Effects Rural Amenity Assessment”, and dated 22 September 2023.

<p><i>and amenity values present within the coastal environment are maintained.</i></p>	<p>AEE⁷⁴: “Wayfinder therefore consider that any adverse effects on natural character resulting from the proposal will be very low. Rather, they consider that the proposal will have positive effects on natural character as with the establishment of the coastal native vegetation framework, the site will feel more natural than it does currently, and this is likely to enhance the wider coastal landscape experience.”</p> <p>The proposed subdivision can therefore be considered consistent with objective GRUZ-O3.</p>
<p><i>GRUZ-O4</i></p> <p><i>The primary productive purpose and predominant character of the General Rural Zone are not compromised by the establishment of potentially incompatible activities.</i></p>	<p>This objective is seeking to protect rural production activities from reverse sensitivity effects. For the reasons set out in the assessment of RLR-O1 and RLR-P5 above, the proposed lifestyle sites will not give rise to reverse sensitivity effects.</p>
<p><i>GRUZ-P1</i></p> <p><i>To enable primary production (including intensive primary production) and ancillary activities, recognising the primary productive purpose and predominant character and amenity of the General Rural Zone.</i></p>	<p>The proposed subdivision will remove a relatively small area of LUC7 land from production from Mangakuri Station and will not prevent or hinder primary production from the remainder of the property in achieving consistency with this policy.</p>
<p><i>GRUZ-P2</i></p> <p><i>To provide for non-primary production related activities that have a functional or operational need for a rural location, and/or that support the function and wellbeing of rural communities and/or the enjoyment of the rural environment, and contribute to the vitality and resilience of the District’s economy, and where they are managed to ensure that:</i></p> <ol style="list-style-type: none"> <i>1. their scale, intensity and built form are in keeping with the rural character of the General Rural Zone;</i> <i>2. they maintain a level of amenity in keeping with the rural character of the General Rural Zone;</i> 	<p>The proposed lifestyle sites and anticipated future dwellings on them have an operational need for the enjoyment of the rural (and coastal) environment and will provide population to support rural communities and the resilience of the District’s economy. In managing the effects of the proposed subdivision future building floor areas are limited to 250m² and building height on Lots 3 – 9 to 6.5m, amongst additional design controls⁷⁵ to protect character and amenity as is consistent with GRUZ-P2(1) & (2). As has already been assessed reverse sensitivity effects will be minimised in terms of GRUZ-P2(3); and as set out and concluded in the August 2023 updated AEE, adverse effects are able to be appropriately avoided, remedied, or mitigated in achieving consistency with GRUZ-P2(4).</p> <p>The proposed subdivision is therefore generally consistent with GRUZ-P2.</p>

⁷⁴ Section 5.3.2, page 46.

⁷⁵ See August 2023 updated Application & AEE, section 5.3.3.7, page 51.

<p>3. they minimise reverse sensitivity effects on activities otherwise anticipated within the General Rural Zone; and</p> <p>4. adverse effects are avoided, remedied or mitigated.</p>	
<p><i>GRUZ-P3</i></p> <p><i>To manage the scale of post-harvest facilities rural industry and commercial activities to ensure that they remain compatible with the primary productive purpose of the General Rural Zone, and potential adverse effects on the character and amenity of the rural area are avoided, remedied or mitigated.</i></p>	<p>Not applicable to this application.</p>
<p><i>GRUZ-P4</i></p> <p><i>To manage the bulk, scale and location of buildings to maintain the character and amenity of the rural area and, where applicable, to protect the natural character and amenity of the coastal environment.</i></p>	<p>It can be anticipated that a dwelling will be established on each of the proposed lifestyle sites. As set out in the August 2023 updated application and AEE the recommendations of Wayfinder have been adopted as part of the application⁷⁶, and these recommendations include controls relating to the bulk, scale and location of buildings amongst additional design controls and a vegetation planting concept to protect the natural character and amenity of the coastal environment, while maintaining the character and amenity of the rural environment. This is summarised in the Wayfinder assessment letter dated 22 September 2023:</p> <p style="text-align: center;"><i>“As identified in my assessment, these coastal attributes are what has driven the Mangakuri proposal. The desire has been to create a landscape-led development within a part of the station that has least productive value. Rather than creating a fragmented development through ad hoc, one-off lifestyle developments over a period of time, the proposal seeks to cluster the built form and anchor it to the coast with appropriate vegetation. It strengthens the connection to the existing settlement, enhancing its coastal character.”</i></p> <p>Accordingly, the proposed subdivision is considered to be consistent with GRUZ-P4.</p>
<p><i>GRUZ-P5</i></p>	<p>This policy relates to reverse sensitivity. Although the future dwellings on the proposed lifestyles sites will</p>

⁷⁶ Section 5.3.3.7, pages 51-52.

<p><i>To require sufficient separation between sensitive activities and existing primary production and intensive primary production activities, and between new intensive primary production activities and property and zone boundaries, in order to avoid, remedy or mitigate potential adverse effects, including reverse sensitivity and land use conflict.</i></p>	<p>be sensitive activities, they are unlikely to give rise to adverse reverse sensitivity effects on existing primary production activities for the reasons outlined under RLR-P5 above. Consistency with this policy is therefore achieved.</p>
<p>GRUZ-P6</p> <p><i>To manage location of trees so that adjoining public roads and properties are not adversely affected by shading.</i></p>	<p>The proposed plantings will be subject to PDP standard GRUZ-S6 which requires plantings within 5m of a public road to be no higher than 9m and plantings (which extend for more than 20m) to be setback a minimum distance of 5m from properties under separate ownership. The proposed landscape plantings will be subject to this PDP standard and will be either managed to comply with it, or resource consent will be sought at that time.</p>
<p>GRUZ-P7</p> <p><i>To ensure incompatible activities do not locate in the General Rural Zone where the activity:</i></p> <ol style="list-style-type: none"> <i>1. undermines the primary productive purpose and predominant character of the General Rural Zone;</i> <i>2. constrains the establishment and use of land for primary production;</i> <i>3. result in reverse sensitivity and/or lead to land use conflict; and/or</i> <i>4. does not have a functional or operational need for a rural location.</i> 	<p>The proposed lifestyle site subdivision is not considered to be incompatible to the General Rural Zone, it has been carefully designed and planned so as not to undermine the primary production potential of the site or the predominant character of the General Rural Zone (refer to Wayfinder assessment dated 22 September 2023), and nor to result in reverse sensitivity effects. Regarding the need for a rural location, rural lifestyle subdivision is by definition located in the rural environment, as set out in the Wayfinder assessment however, the location and design of the subdivision within the coastal rural landscape will have positive benefits in terms of coastal natural character with the vegetation proposed and will largely avoid effects on rural amenity.</p>
<p>GRUZ-P8</p> <p><i>To limit residential and rural lifestyle subdivision that results in fragmentation of the rural land and/or that restricts the use of rural land for productive purposes.</i></p>	<p>As discussed above due to the low productive capacity of the LUC7 land to be subdivided and the clustering of the lifestyle sites in a corner of the farm, the subdivision will not significantly affect the productive potential of Mangakuri Station, let alone the wider rural land resource.</p> <p>Any subdivision results in fragmentation of land. In seeking to limit rural lifestyle subdivision the same comments apply as set out above for RLR-P3. In short, the subdivision will result in a greater number of lifestyles sites being created from a single land title than anticipated by the PDP, therefore to mitigate potential inconsistency with RLR-P3 and GRUZ-P8 a</p>

	condition is offered restricting subdivision from 3 separate Mangakuri Station records of title for a period of six years, ⁷⁷ as well as the same restriction being applied to balance Lot 11 by way of consent notice. The full wording of the proposed condition is set out under this table below. The condition offered is a transfer of the development rights from these additional titles to enable the eight lots to be created at one time as proposed. With such a condition it is considered that the proposed subdivision is consistent with GRUZ-P8.
<p><i>GRUZ-P9</i></p> <p><i>To avoid establishment of commercial or industrial activities that are unrelated to the primary productive purpose of the General Rural Zone, or that are of a scale that is incompatible with the predominant character and amenity of the rural area.</i></p>	Not applicable to this application as it does not involve commercial or industrial activities.
<p><i>GRUZ-P10</i></p> <p><i>To ensure activities within the General Rural Zone are self-sufficient in the provision of a suitable on-site wastewater treatment and disposal system, stormwater disposal system, and water supply, unless an appropriate alternative system is available to connect to.</i></p>	The assessment provided by Strata Group demonstrates how on-site wastewater and stormwater disposal can be provided for each proposed lifestyles site while complying with the recommendations of the RDCL geotechnical assessment. Water supply is proposed via rainwater harvesting. Accordingly, each proposed lifestyle site is demonstrated as being self-sufficient for on-site services achieving consistency with this policy.

** Provisions subject to appeal, at the time of writing December 2023..*

⁷⁷ The consent condition now offered by the Applicant has extend this proposed no subdivision consent notice and covenant to 9 years, and added an additional consent notice to prevent any further lifestyle lot subdivision of Lot 12.