

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**

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**SUMMARY EVIDENCE BY PHILIP ANTHONY MCKAY**

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## **INTRODUCTION AND QUALIFICATIONS**

- 1 My full name is Philip Anthony McKay and my qualifications, experience and agreement to abide by the Code of Conduct for Expert Witnesses is as set out in paragraphs 2 – 7 of my Statement of Evidence (“SOE”).
- 2 My SOE covers the matters set out in paragraph 15 of that statement, which are repeated 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
- 3 My summary and conclusion after considering these matters is repeated from my SOE as follows.
- 4 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.<sup>1</sup>

- 5 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 Proposed Central Hawke's Bay District Plan ("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.
- 6 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.
- 7 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.
- 8 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

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<sup>1</sup> Conditions are included in the Applicant's Draft Condition set to provide certainty of this.

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

- 9 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.
- 10 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.

### **PRINCIPAL PLANNING MATTERS IN CONTENTION**

- 11 I consider the determinative resource management planning issues to the consideration of this application is whether with the proposed mitigation conditions, the proposal:

- a) Achieves consistency with the relevant objectives and policies of the PDP, and particularly those specific to subdivision in the General Rural Zone; and
- b) Undermines the integrity of the PDP and creates an adverse precedent effect.

- 12 For the reasons set out in paragraph 5 above I consider that general consistency is achieved with the relevant objectives and policies of the PDP.
- 13 Regarding the matter of plan integrity and precedent I set out in Paragraph 83 of my Statement of Evidence, why I consider that granting consent would not create an adverse precedent effect due to the combination of factors that make the proposed subdivision unique and difficult to replicate. I refer to my original statement for those reasons, rather than repeating them.

### **REBUTTAL EVIDENCE OF RYAN O'LEARY - PLANNING**

- 14 At paragraph 11 of his rebuttal Mr O'Leary states that no permitted baseline should be applied as it would be inconsistent with the objectives and policies in the PDP. My reference to the permitted baseline is specific to landscape, natural character, and visual effects from activities that are permitted by the PDP that could be expected to add built form to the existing undeveloped

landscape. Section 104(2) of the RMA allows adverse effects to be disregarded if the plan permits an activity with that effect, it does not refer to consistency with plan objectives and policies. I am not suggesting that the landscape, natural character, and visual effects of the proposed subdivision should be disregarded, rather that such effects need to be referenced against the potential built form of non-fanciful permitted activities under the PDP.

- 15 At paragraph 19 of his rebuttal Mr O’Leary “accepts that RLR-P3 and GUZ-P8 are not an absolute bar to rural lifestyle subdivision in the GRUZ as it seeks to limit, and not avoid or prevent it.” Mr O’Leary then goes on to reference from the PDP the Principal Reasons for the RLR Strategic Direction. I quote the paragraph that Mr O’Leary references as follows:<sup>2</sup>

*The subdivision of land will be primarily for the purpose of achieving a more efficient outcome for land based primary production around pastoral, cropping or forestry purposes. There may be the need to subdivide off a surplus residential building or provide for those property owners who may wish to subdivide their house from the farm and retire on the property, but these activities need a level of control. The Plan aims to prevent large numbers of small holdings in the rural environment, particularly on the highly productive land within the Rural Production Zone.*

- 16 As explained in Mr Yule’s SOE the proposed subdivision does have regard to achieving a more efficient outcome for the land based primary production operation of Mangakuri Station. I explain in paragraph 53 of my statement of evidence how the clustering of the proposed lifestyle sites achieves better outcomes in terms of minimizing effects on the productive land of Mangakuri Station<sup>3</sup> and the potential for reverse sensitivity compared to subdivision options provided for in the General Residential Zone by the PDP rules over the four coastal titles of Mangakuri Station. In my opinion the proposed conditions restricting future subdivision on balance Lots 11 and 12 and the three adjoining titles, limit the number of small holdings created to that capable of being created overtime under the PDP General Rural Zone Lifestyle Site rules, and would be consistent with the extract of the principal reasons quoted above.

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<sup>2</sup> PDP – Rural Land Resource Chapter, Principal Reasons (third paragraph).

<sup>3</sup> The proposed lifestyle sites occupy either low productivity LUC6 or LUC7 land.

- 17 While the above quoted RLR Principal Reasons may seek to provide for the subdivision of surplus residential buildings or the creation of lifestyle lots for retired farmers, the General Rural Zone subdivision rules under SUB-R5(1) enable the creation of a lifestyle lot once every 3 years and do not restrict such subdivision to only these purposes.
- 18 At paragraph 21 Mr O’Leary considers that subdivision of the other coastal titles of Mangakuri Station would require Discretionary Activity resource consent under Rule GRUZ-R5(10). I acknowledge that this would be the case if the lifestyle sites created were within the Coastal Environment Area. The potential subdivision opportunities referred to by My Yule deliberately place the proposed lifestyle sites outside of the Coastal Environment. Looking at the rules again I acknowledge that an interpretation could be that if the lifestyle site was outside of the Coastal Environment but the large balance site incorporated an area of Coastal Environment, then Rule GRUZ-R5(10) would still apply. I understand that Mr Lawson disagrees with that interpretation and he commented further on this rule interpretation in his legal submissions. As per my original evidence my interpretation is that the lifestyle site needs to be in the Coastal Environment Area for Rule GRUZ-R5(10) to apply.
- 19 Regardless of whether a subdivision with a complying General Rural Zone lifestyle site located outside of the Coastal Environment, but with a balance area partially within it is subject to Rule GRUZ-R5(1),<sup>4</sup> GRUZ-R5(2),<sup>5</sup> or Rule GRUZ-R5(10)<sup>6</sup>, it would be consistent with the relevant subdivision objectives and policies of the PDP. In my opinion such a subdivision, assuming appropriate access, building platform, and on-site service design, would likely justify approval on a non-notified basis, regardless of the status it falls to be assessed under. Nevertheless, due to the balance area of the Mangakuri coastal land titles being partly within the Coastal Environment and with the coastal portions being in a Tsunami Hazard Area, I acknowledge that my statement in paragraph 53 of my SOE that complying lifestyle sites over the

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<sup>4</sup> Complying with this rule and all the conditions and standards, accepting that the lifestyle site is the lot being subdivided and that the lifestyle site is clear of the Coastal Environment and mapped Natural Hazard areas, is a Controlled Activity.

<sup>5</sup> Complying with the Rule Conditions but Restricted Discretionary due to the balance lot including a mapped natural hazard area (Tsunami Hazard).

<sup>6</sup> Discretionary Activity due to the location of the balance area within the Coastal Environment.

applicant's multiple titles would be "*as of right controlled activities*", is open to interpretation that the resulting subdivision may not be a controlled activity. Regardless of activity status, it is my opinion that such subdivision<sup>7</sup> would be consistent with the General Rural Zone subdivision objective, policy, and rule structure and could therefore legitimately be planned for by the applicant if the current proposal were to be declined.

- 20 I have reviewed paragraphs 22 and 23 of Mr O'Leary's rebuttal statement and retain my opinion that the conditions offered placing future restrictions on subdivision are a legitimate and appropriate way to achieve overall consistency with the objectives and policies of the PDP, including those seeking to maintain the productive capacity of the rural land resource,<sup>8</sup> enable primary production,<sup>9</sup> and manage reverse sensitivity effects.<sup>10</sup>
- 21 I disagree with Mr O'Leary's statement in paragraph 26 of his rebuttal that the granting of consent would act counter to the community's expectations and undermine the integrity of the PDP. In my opinion this will not be the case as with the subdivision limitation conditions offered, the subdivision can achieve general consistency with, and will not be contrary to, the objectives and policies of the PDP, and for the reasons that I set out in my SOE<sup>11</sup> will unlikely be replicated by other applications.

### **SUGGESTED CONDITIONS**

- 22 On behalf of the Applicant, I have tabled a track change version of the Draft Conditions. The track changes include the additional subdivision limitations offered by the Applicant, conditions to provide greater certainty for the achievement of the landscape concept plan, and various additions recommended by the technical experts.
- 23 I propose that the most efficient way to introduce the Applicant's Draft Conditions set would be for me to take you through the significant proposed

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<sup>7</sup> Where the single lifestyle site being created is located outside of the Coastal Environment and clear of any other PDP overlays.

<sup>8</sup> RLR-O1, RLR-O2.

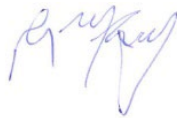
<sup>9</sup> GRUZ-O4, GRUZ-P1.

<sup>10</sup> RLR-P5, & GRUZ-P7.

<sup>11</sup> Paragraphs 82 and 83.

track change amendments, and explain the origin of, or reasons, for each amendment.

- 24 I am happy to do this as you deem appropriate either before or after answering questions on my evidence.
- 25 In following on from Mr O’Leary’s rebuttal<sup>12</sup> I also advise that I am happy to caucus on these conditions as required.



P A McKay

25 June 2023

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<sup>12</sup> Paragraph 29.