

BEFORE THE INDEPENDENT HEARINGS COMMISSIONER

IN THE MATTER OF: An application for subdivision consent, pursuant to section 11 RMA for a 11-lot subdivision (8 rural residential allotments, 2 balance lots and a boundary adjustment (amalgamation)

AND

IN THE MATTER OF: A hearing by Central Hawke's Bay District Council

REBUTTAL EVIDENCE OF RYAN O'LEARY – PLANNING

Dated 21 June 2024

Response to the Evidence of Mr McKay

Activity Status under the Operative District Plan

1. Mr McKay and I agree that resource consent is required as a Discretionary Activity under the ODP as the proposal does not comply with:
 - a. Rule 9.9.4 (i) as the proposed accessways onto Williams Road cannot comply with the minimum vehicle sightline distance for a 100km/hr speed limit road¹.
 - b. Rule 9.9.4 (ii) as the subdivision is located in the Coastal Margin.
2. The s42A Report² identified that *Standard 9.10(a) Minimum Lot Size* of the ODP was not met. I wish to correct this sentence by removing the underlined text. The intention of this paragraph was to clarify that this standard was met (e.g. each lot has a 4000m² minimum lot size). Both Mr McKay and I agree that the subdivision application triggers the same consent requirements and that the application can be assessed on its merits under s104B of the Act as a Discretionary Activity.

Section 91 RMA Considerations.

3. Mr McKay accepts that resource consent would likely be required under the NES-FW for the discharge of stormwater to the natural inland wetland. He considers that consent would likely be required under Regulation 45C of the NES-FW. I consider that this regulation only applies to “urban developments” and that resource consent is more likely required under Regulation 54 as a Non-Complying Activity in this rural context.
4. The applicant has identified alternative arrangements for stormwater disposal³ are available which would not involve damming, diversion and/or discharge of water within or within a 100m setback from a natural inland wetland. I understand that there is no hydrological connection between the damming, diversion and/or discharge of water and the wetland; and, this activity is not likely to change the water

¹ Evidence of Philip McKay, para 27

² S42A Report, para 2.55

³ Mr Gabrielle’s evidence para 34.1 to 34.3

level range or hydrological function of the wetland. I accept that this would likely be considered a permitted activity under the NES-FW.

5. I accept that the applicant has alternative options to dispose of stormwater as a permitted activity. Should the applicant elect to proceed with stormwater disposal to the natural inland wetland, resource consent would be required from HBRC. These matters can be appropriately reinforced by resource consent conditions. I do not consider it necessary to invoke Section 91 RMA as this resource consent application can be determined separately.

Permitted Baseline

6. I agree with Mr McKay that there is no permitted baseline for subdivision which is always a Discretionary Activity under the PDP.⁴
7. However, Mr McKay considers there are specific effects resulting from the proposed subdivision that could also result from activities permitted under the PDP. These include the natural character and landscape effects arising from future dwellings on the lifestyle sites created which could arise to some extent via permitted land uses with no subdivision.
8. He refers to:
 - a. GRUZ-R1(a) which permits one (1) residential unit, three (3) additional units on sites over 100 ha, and one (1) minor residential dwelling up to 100m² maximum gross floor area (GFA);
 - b. GRUZ-R3 which permits accessory buildings associated with primary production;
 - c. GRUZ-R8 which permits visitor accommodation up to 100m² in maximum floor area; and,

⁴ Evidence of Philip McKay, para 35.

- d. Rule GRUZ-R9 which permits 'commercial activities not otherwise provided for' up to a maximum of 100m² floor area.
9. Mr McKay accepts 4 dwellings plus one minor residential unit, visitor accommodation and an additional form of commercial activity would be fanciful⁵. I add that it would also exceed the "Cumulative Limits" under GRUZ-S1(8) which states the combined area of any commercial and/or visitor accommodation activities must not exceed 100m² per site.
10. Mr McKay considers that it is appropriate to "take into account" the visual and landscape effects of 2 dwellings in addition to one or more visitor accommodation activity up to a combined total GFA of 100m². However, he appears to stop short of saying that these effects should be disregarded as a permitted baseline under (as per s104(2) RMA).
11. In my opinion, no permitted baseline should be applied as it would be inconsistent with the objectives and policies in the PDP. The PDP policy framework enables residential use of land that supports primary production activities (GRUZ-P1) and seeks to limit rural lifestyle subdivision in the GRUZ (GRUZ-P8). A permitted development would give effect to the objectives and policies of the PDP whilst the proposal does not. Further inconsistency remains insofar as:
 - a. RLR-04 seeks to direct residential activities unrelated to primary production to more appropriately zoned land (e.g. Rural lifestyle).
 - b. GRUZ-03 and GRUZ-P4 seeks to manage activities and the bulk and scale of buildings to ensure natural character and amenity values present in the coastal environment are maintained.
 - c. CE-02 seeks to protect the natural character of the coastal environment from inappropriate subdivision, use and development.
 - d. CE-P3 seeks to avoid sporadic or sprawling development in the coastal environment.

⁵ Evidence of Philip McKay, para 37.

12. Ms Griffith's evidence identifies that the proposal is inconsistent with CE-P6 and CE-P7. I note that CE-P7 requires that proposed activities in the coastal environment area minimise its adverse effects and CE-P6 requires demonstration that the activity is located appropriately, having regard to its effects.
13. I agree that some consideration can be given to permitted activities when assessing the visual and landscape effects, as effects cannot be assessed in a vacuum. The GRUZ does not anticipate an absence of built form but does expect that the form be related to or in support of the purpose of the zone.
14. In my opinion, the effects of the proposed subdivision and a comparison of 2 dwellings and visitor accommodation allowed as of right is not equivalent. Mr Bray's proposed density controls enable dwellings up to 250m² and up to 6m high. This is considerably larger than the 100m² GFA permitted for visitor accommodation, of which there would be only one under the permitted zone rules. In addition to development of the 8 rural lifestyles sites, Lots 11 and 12 (balance lots) would enable the same credible development (2 dwellings and visitor accommodation up to 100m² GFA without subdivision).

Fragmentation and land use change

15. On review of the cascade of provisions within the PDP, Mr McKay comes to a different conclusion based on the appropriateness of the subdivision. He considers that:
 - a. RLR-04 and RLR-P3 places greater emphasis for the protection of highly productive land (HPL) which is not engaged here⁶;
 - b. RLR-P3 and GRUZ-P8 seeks to *limit* rural lifestyle subdivision in the GRUZ, which is not an avoidance outcome. This contrasts with the equivalent Rural Production Zone policy RPOZ-P8 which seeks to avoid rural lifestyle subdivision and the rule framework in SUB-R5.
16. For ease of reference, I have quoted RLR-04, RLR-P3 and RLR-P8 in full, with emphasis added to illustrate where the text of these provisions add specific meaning.

⁶ Evidence of Philip McKay, para 51

17. I agree with Mr McKay that the cascade of PDP provisions direct significantly more restrictive subdivision provisions for the Rural Production Zone as compared to the General Rural Zone⁷. However, the Strategic Direction for the RLR applies across all Rural Zones. I consider that the operative functions of both RLR-04 and RLR-P3 are to direct lifestyle subdivision to other locations zoned for that purpose as underlined below. The **bold** text in RLR-04 simply adds that this should ‘also’ not be situated on HPL (RLR-04). In the case of RLR-P3, fragmentation of the rural land resource is to be *minimised 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.*

18. I consider that the cascade of provisions of the PDP intentionally seeks to generally locate multiple rural lifestyle lot developments unrelated to primary production activities in zones more suitable for that purpose. This is further emphasised in the *Principal Reasons*⁸ for the GRUZ and the use of zoning as a *Method* to direct activities to appropriate locations within the rural environment.

RLR-04 Residential and other activities that are unrelated to primary production are directed to locations zoned for those purposes and that are not situated on highly productive land.

RLR-P3 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

GRUZ-P8 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.

19. I accept that RLR-P3 and GRUZ-P8 is not an absolute bar to rural lifestyle subdivision in the GRUZ as it seeks to *limit*, and not avoid or prevent it. The *Principal Reasons* for the RLR Strategic Direction acknowledges the circumstances in which the creation of such a lot would be appropriate, such as when there is a 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.

⁷ Ibid, para 51.

⁸ As set out in paragraph 4.23 of the s42A Report

20. The PDP does not seek to prevent small holdings, but “*prevent large numbers of small holdings in the rural environment*”. I consider this is to be achieved by the Rules, Standards and Assessment Matters which collectively act to ‘limit’ the scale, density and frequency of rural lifestyle subdivision in the GRUZ. This application must be assessed on its merits in that context.
21. Mr McKay considers that the clustering of the lifestyle sites better achieves the objectives of GRUZ-02 in maintaining the predominant character of the GRUZ, compared to achieving the same number of lots by an ‘as of right’ controlled activity subdivision approach⁹. His comparison is to a ‘whole of farm approach’, which includes the subdivision of four large coastal titles. Subdivision of the titles within the Coastal Environment would require resource consent as a Discretionary Activity under GRUZ-R5(10). I do not consider it is appropriate to compare the effects of this subdivision proposal to a hypothetical subdivision that would need a resource consent to be determined, on its merits as a Discretionary Activity.
22. I have considered the conditions offered at paragraph 58 of Mr McKay’s evidence which go further than that originally proposed by the applicant. A greater density of lifestyle subdivision is sought, with sites clustered together, to be counteracted by restrictions on future subdivision and adjoining lots. Some of those restrictions would be in perpetuity (Lot 11)¹⁰ and others for a limited time-bound period (9 years) after which the potential for further lifestyle subdivision could resume. In my view, the approach seeks to trade-off/off-set potential lifestyle sites which require resource consent¹¹ to establish¹² across multiple titles amongst the 1500ha+ farmholding.
23. Mr McKay considers that this is a legitimate and effective approach to mitigating land fragmentation effects as to achieve consistency with RLR-P3 and GRUZ-P8¹³. However, I consider RLR-P3 seeks to minimise land fragmentation *through directing lifestyle subdivision to the Rural Lifestyle Zone and limiting lifestyle subdivision in the General Rural Zone*. The PDP has not taken an approach to ‘manage’ lifestyle

⁹ Ibid, para 53

¹⁰ Although further residential development would be permitted on this lot.

¹¹ Some subdivisions require subdivision consent as a Discretionary Activity

¹² RM220210 has been consented and forms part of the existing environment

¹³ Ibid, para 56

subdivision in the GRUZ¹⁴. Rather, it intends to ‘minimise’ fragmentation by directing rural lifestyle subdivision to the Rural Lifestyle Zone but allow rural lifestyle subdivision in the GRUZ in limited circumstances. Those limits are particularly important given the PDP aims to ‘prevent large numbers of small holdings’. The proposed subdivision seeks to cluster a greater number of lifestyle sites together and contrasts with this policy direction which seeks to limit rural lifestyle subdivision.

Precedent Effects and Integrity of the Proposed District Plan

24. Mr McKay sets out a number of factors¹⁵ which he considers makes the subdivision proposal unique and therefore, granting of the subdivision would not set an adverse precedent. I generally accept that there is unlikely to be a subdivision with the precise set of circumstances as those outlined by Mr McKay, particularly given this application was lodged prior to Council’s Decision on the PDP being notified. However, Mr McKay and I agree that greater weight should be given to the PDP direction in any case.
25. My McKay states that 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. I agree. However, Mr McKay and I differ on the consistency of the proposed subdivision with the provisions of the PDP as set out above.
26. In my view, the proposal represents a direct challenge to the Strategic Direction for the Rural Land Resource; and, the cascade of provisions that the PDP seeks to implement which seeks to limit rural residential sites in this zone. The Rules, Standards and Assessment Matters collectively act to ‘limit’ the scale, density and frequency of rural lifestyle subdivision in the GRUZ. This is reinforced by the explanations set within the *Principal Reasons* for adopting the policies and methods in the GRUZ and the Strategic Direction for the RLR. This subdivision is the first real ‘acid-test’ to the overall direction of the PDP insofar as it should apply to the GRUZ. I consider that the granting of consent would act in counter to the community’s expectations and undermine the integrity of the PDP.

¹⁴ I discuss this further at paragraph 4.35 of the s42A Report

¹⁵ Evidence of Philip McKay, para 83

Conditions

27. Appendix 1 of the s42A Report included a set of Draft Consent Conditions which might be imposed, should the Commissioner be of the mind to grant resource consent. I note that some matters relevant to these conditions are matters contested in evidence (e.g. the extent of mitigation required in relation to landscape effects). Other conditions, such as the implementation of the Landscape Management Plan would require further information from the applicant.

28. Stormwater conditions may also need to be amended to reflect the stormwater disposal option selected by the applicant, should the applicant discharge to the natural inland wetland or utilise an alternative option. Wastewater conditions may also require some amendment should the applicant elect to utilise a shared wastewater system.

29. The applicant proposes that a track change version of conditions be tabled at the hearing and would have an opportunity to offer conditions on the above matter, should they wish to do so. I would be happy to caucus on these conditions and co-ordinate further comments from the Council's technical experts as necessary.