

**BEFORE AN INDEPENDENT HEARING COMMISSIONER
NEW PLYMOUTH DISTRICT COUNCIL**

IN THE MATTER of the Resource Management Act
1991 (the "RMA")

AND

IN THE MATTER of an application by Popuanui
Chickens Limited for subdivision
and land use consent relating to
the land at 24 Te Arei Road West,
Sentry Hill, New Plymouth
(SUB21/47978 / LUC26/48992)
(the "**Application**")

**CLOSING SUBMISSIONS ON BEHALF
OF POPUANUI CHICKENS LIMITED (THE APPLICANT)**

Dated: 28 July 2026

Govett Quilliam
THE LAWYERS

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MAY IT PLEASE THE COMMISSIONER:

1. Introduction

1.1 These closing submissions are made on behalf of Popuanui Chickens Limited (the **Applicant**). They address the following issues raised by Commissioner McKay during the hearing on 14 July 2026 and respond to the reporting planner's position on them:

- a) Relocating the Lot 2 building platform;
- b) Correcting and strengthening the no-complaints covenant;
- c) Potential amenity effects on future residents and conflict;
- d) Certainty for future owners and activity status associated with potential future variations;
- e) Consistency with objectives and policies, in particular RPORZ-P3 and P7; and
- f) Precedent and district plan integrity.

1.2 Each of the above matters is addressed in turn.

1.3 In summary, the Applicant's reply is that none of the matters identified above provide a basis for declining the application. The Applicant submits that the evidence before the Commissioner, together with the proposed conditions of consent, adequately addresses each of these matters and supports the grant of consent.

2. Relocating the Lot 2 building platform

2.1 The Applicant confirms it is agreeable to moving the building platform on Lot 2 further south west.¹ This is shown in the revised scheme plan attached to Ms Martin's reply evidence as Addendum A. This will result in the future dwelling on Lot 2 being located at least 110m from the wall of the nearest poultry shed and at least 214 m from the nearest shed's exit end.

¹ To better accommodate this and align with the topography of the lots, some additional minor amendments have also been made to the boundaries of Lot 1 and 2. It is considered these are within scope given there is no material change to the overall proposed scheme and lot sizes.

- 2.2 Appendix V of the Regional Air Quality Plan for Taranaki (**RAQP**) sets out preferred buffer distances to prevent or minimise adverse odour and dust effects. As set out in Ms Martin's reply evidence, Table 1 of Appendix V recommends a 100 m buffer for sheds housing fewer than 30,000 birds and a 200 m buffer for sheds housing between 30,000 and 59,999 birds. The Applicant's sheds house 34,000 birds, which is only 4,000 birds above the lower threshold. On a proportional basis, this equates to an equivalent buffer distance of approximately 113 m.
- 2.3 Notably, Appendix V states that if these buffer distances cannot be met, it does not mean that consents will automatically be declined. Further, that in the case of tunnel sheds (which the Applicant's sheds are), the buffer distances are to be calculated from the shed exit end, provided all fugitive emissions are minimised.
- 2.4 The proposal should therefore be assessed as meeting, rather than breaching, the separation distance that the regional planning framework indicates is appropriate to avoid or minimise odour and dust effects from an operation of this kind.
- 2.5 It is accepted that the proposal does not meet the permitted 400 m setback in Effects Standard RPROZ-S2 of the PODP. However, as acknowledged at paragraph 2.8 of Mr Laureson's addendum report, "the rationale [for the 400m setback] is grounded in regional policy, particularly the RAQP (and its predecessor, the Regional Air Plan for Taranaki (1997))". The 400 m setback in RPROZ-S2 therefore represents the *maximum* buffer distance recommended in Appendix V, which is directed at the largest operations (those housing more than 80,000 birds). It has been adopted in the Part Operative District Plan as a single fixed standard that applies regardless of the actual scale of the neighbouring poultry activity.
- 2.6 In summary, it is submitted that Appendix V of the RAQP reflects Taranaki Regional Council's considered assessment of the separation distances required to manage odour and dust effects across the full range of poultry operation scales. Given that the buffer distance which Appendix V recommends for an operation of this scale can be achieved and taking into account the mitigation measures proposed, the Applicant submits that it is reasonable to find that the odour and dust effects on the future residents of Lots 1 and 2 will be acceptable and that a separate odour assessment is not required in this instance.

3. No complaints covenant

- 3.1 During the hearing, the Commissioner queried whether draft conditions 28 and 29 should include a reference to Lot 3. The Applicant confirms that this reference should be removed given that the poultry farm will be located on Lot 3 and Lot 3 will therefore become the “benefitted land”.
- 3.2 The Commissioner also enquired as to whether draft condition 28 could be strengthened to ensure the relevant reverse sensitive effects were addressed. A revised condition is proposed (and volunteered by the Applicant) as follows:

Reverse sensitivity covenant

28. The consent holder must, as volunteered by the applicant, register a covenant under the Land Transfer Act 2017 against the Records of Title for Lots 1, 2 and 4 to avoid reverse sensitivity effects on the established intensive indoor poultry operation (**Poultry Farm**) on the Lot 3 land, which is operated by Tegel Foods Limited. The covenant must:

- (a) benefit Lot 3 and the operator of the Poultry Farm;
 - (b) burden Lots 1, 2 and 4;
 - (c) contain a no-complaints and no-opposition covenant, under which the registered proprietors of Lots 1, 2 and 4 covenant, for themselves and their transferees, assignees and successors in title, not to directly or indirectly complain about, submit on, object to, oppose, or fund or facilitate any other person to complain about, submit on, object to or oppose the Poultry Farm, including in relation to odour, discharges to air, water and land, noise, visual and traffic effects arising from the Poultry Farm, provided that the Poultry Farm is being lawfully carried out in accordance with the relevant district or regional plan, resource consent, or existing use rights.
- 3.3 The Council's draft condition 28 relied on an agreement between the consent holder and Tegel Foods Limited. However, it is submitted this is not necessary given the Applicant is the owner of Lot 3. Further, the original condition required compliance by a third party and if Tegel Foods Limited simply doesn't engage, or holds out for terms unrelated to reverse sensitivity, this may inadvertently frustrate the consent. The above condition is intended to provide sufficient the relevant reverse sensitive effects are addressed in the covenant.

4. Amenity effects on future residents: odour, noise, traffic

- 4.1 During the hearing, Ms Laurenson acknowledged that the level of effects being generated by the poultry farm are lower than she had originally understood.

However, she confirmed she remained concerned that future residents of Lots 1, 2 and 4 will experience unacceptable amenity effects from the poultry farm, principally as a result of noise and odour, but also traffic.

- 4.2 The Applicant's evidence is drawn from nearly 18 years of actual operation. Mr Curry has operated the farm since approximately 2008 and lives on site. Neither he nor Tegel has received a complaint about noise, odour, traffic or lighting at any time.
- 4.3 The Council's own complaint review identified 30 odour and noise poultry farm-related complaints across the Taranaki district between 2005 and 2026, but *none* related to the application site.

Noise

- 4.4 There is no evidence that the Poultry Farm generates unacceptable noise effects. Should the character and intensity of the existing noise change such that the PODP's permitted noise standards are breached, then a consent would need to be obtained. Additionally, section 16 RMA (duty to avoid unreasonable noise) will continue to apply. It is submitted that these controls will ensure an acceptable level of amenity (consistent with other RPROZ land) for the future residents.
- 4.5 The primary noise-generating poultry activities are the shed's ventilation fans (which are indiscernible at the proposed lot locations) and intermittent truck movements (which are a permitted activity). Notwithstanding this, acoustic insulation is offered for dwellings on Lots 1, 2 and 4. This will be designed to a standard appropriate for significantly louder environments and provide a conservative margin of protection for internal amenity, particularly at night. It is accepted that this insulation addresses internal rather than outdoor noise, but there is no evidence to suggest that outdoor poultry-farm noise during the day is unacceptable. In any event, if the poultry farm was to generate noise which exceeded the permitted levels or unreasonable noise, enforcement action could be taken in the usual way.
- 4.6 It is submitted that Ms Laurenson's concerns that "there is nothing to hold the farm to the current effect" and that "it could get messy", are not a sufficient reason to refuse consent.

Odour

- 4.7 The poultry farm is bound by the conditions of the Regional Council air discharge permit, which include a total shed-area cap, a total bird cap (mass density), a requirement to adopt the best practicable option as all times, and that there be no offensive or objectionable odour beyond the boundary. The conditions provide sufficient certainty and any breaches of them are enforceable.
- 4.8 Additionally, and as confirmed in Mr Curry's evidence, the principal risk of adverse odour effects arises during shed clean-outs, which occur twice a year. Any such effect is accordingly infrequent, of short duration, and temporary in nature. This is consistent with RPROZ-O4, which expressly anticipates noise, odour, light overspill and traffic occurring on a cyclic and seasonal basis as part of the established character of the Rural Production Zone. Residents choosing to live within a zone anticipating such activity can reasonably be expected to accept it as a normal incident of the rural production environment.

Traffic

- 4.9 The poultry farm traffic is within the permitted baseline and is cyclic in nature. There is minimal to no night time activity at the poultry farm. The improved site entrance for Lot 3 improves safety.
- 4.10 In summary, it is submitted that the site-specific evidence demonstrates that actual amenity effects at the proposed lot distances are and will be acceptable.

5. Certainty for future owners and activity status associated with potential future variations

- 5.1 The Commissioner raised the question of what controls exist over the poultry farm's operation, given it operates under existing use rights (s 10 RMA), and what certainty future residents of Lots 1, 2 and 4 can have in terms of effects.
- 5.2 In addition to the paragraphs above, the Applicant's planning witness has addressed this in the Right of Reply dated 27 July 2026. The position is summarised below.
- (a) *Existing use rights apply* - Section 10 RMA protects the continuation of the activity at its current scale, intensity and character (~34,000 birds, the existing building infrastructure, and associated effects).

- (b) *Any material intensification requires consent* - If the activity were to intensify such that it is no longer of the same character, intensity and scale, the activity must be assessed against Rule RPROZ-R12 (Intensive indoor primary production) as a restricted discretionary activity (if all RPROZ Effects Standards are met) or discretionary (if they are not). Council would then have discretion to grant, refuse, or impose conditions (including conditions protecting the amenity of Lots 1, 2 and 4).
- (c) *Additional regulatory controls apply* – The discharge permit specifies that any material change to the activity would also require consultation with the Regional Council's Chief Executive and obtaining all necessary approvals. The duty to avoid unreasonable noise under s 16 RMA also continues to apply.

5.3 Importantly, the transition from broiler to breeder rearing has already reduced operational intensity. There is therefore an appropriate and enforceable regulatory backstop which provides an adequate degree of certainty for future residents.

6. Consistency with relevant objectives and policies

6.1 Ms Laurenson indicated that she remained of the opinion that the proposal is inconsistent with the outcomes anticipated for the rural zone. In that regard she noted that the PODP places considerable emphasis on avoiding conflict and on protecting the productive function of rural land.

Conflict

6.2 In response, it is noted that the PODP doesn't define what "conflict" means. RPROZ-P3 directs avoidance of activities that are "incompatible" with the role, function and predominant character of the zone **and** that will result in reverse sensitivity effects or **conflict with permitted activities**, or adverse effects that cannot be avoided, remedied or mitigated. Three observations arise:

- (a) "Avoid" is directed at incompatible activities that generate adverse effects which cannot be avoided or appropriately remedied or mitigated. It is not an absolute prohibition. The policy is qualified by the

incompatibility and mitigation assessment. Where effects can be and are mitigated (as here), this aspect of the “avoid” directive is satisfied.

- (b) “Conflict” relates to permitted activities in the zone. The poultry farm is not a permitted activity in the RPROZ. In any event, the “avoid” directive must relate to a real and demonstrated risk that effects will be experienced so as to cause conflict. The actual operating history of this site, nearly 18 years of coexistence with neighbouring dwellings at comparable or closer distances without a single complaint, demonstrates the absence of conflict.
- (c) The PODP itself accepts residential activities are compatible in the RPROZ (RPROZ-P1 and RPROZ-R3). While “residential activities (except papakāinga) and rural lifestyle living that are not ancillary to rural activities” are listed as incompatible in RPROZ-P3, they are not then listed as non-complying activities in the zone.

- 6.3 RPROZ-P7 requires sensitive activities to be “appropriately located and designed to avoid or mitigate reverse sensitivity, risks and conflict”, including through separation, design, and landscaping/screening. The proposal responds to each of those measures: building platforms are located to maximise separation from the sheds (Lot 2 ~110 m, Lot 1 ~162 m); acoustic insulation is offered as a conservative internal amenity measure; landscape screening is required by condition; and reverse sensitivity covenants will avoid and mitigate reverse sensitivity.

Protecting the productive function of rural land

- 6.4 With respect to the productive function of rural land, Ms Laurenson confirmed that she is satisfied that the productive requirement of the policies was met. This is further supported by the AgFirst report.

Consistency

- 6.5 In *Royal Forest and Bird Protection Society of New Zealand Inc v New Zealand Transport Agency*, the Supreme Court explained that a consent authority must avoid isolating or de-contextualising individual provisions and instead carry out a fair appraisal of the objectives and policies, both individually and in relation to each other in the context of the plan as a whole. The Court stated that not all objectives and policies are of equal importance, and the decision-maker must

grapple with any tensions between them, noting that stronger policies do not always prevail and that fact and context are critical in resolving such tensions.²

6.6 Accordingly, the proposal must be assessed on a fair, integrated, “overall thrust” reading of the objectives and policies, not by treating individual standards as bottom lines. On that reading, it is submitted the core outcomes sought by the plan are achieved: productive rural activity is retained; built form is low-density; sensitive-activity effects are managed by conditions and consent notices; waterbody margins are protected; urbanisation is avoided; and mitigation is enforceable.

6.7 It is therefore submitted this proposal can be considered consistent with the outcomes anticipated for the rural zone.

7. Precedent and district plan integrity

7.1 The Commissioner asked Ms Laurenson whether the lack of precedent and integrity are significant in providing a basis for granting consent. Ms Laurenson advised she placed very little weight on them and that the PODP provisions are a better indicator of whether consent should be granted.

7.2 It is settled law that the grant of a resource consent has no precedent effect in the strict sense; each application is to be assessed on its own merits.³ Notwithstanding that, the reporting planner accepts that the processing history and preserved activity status make this application unusual and not readily replicable. The Applicant agrees and submits that any precedent or integrity effect does not arise in a material way due to the unique circumstances of this application and site.

8. Amendments and conditions

8.1 Ms Martin’s reply evidence dated 27 July 2026 addresses several of the Commissioner’s specific points. Key amendments are:

- (a) *Lot 2 building platform*: moved and reduced to the southwest, increasing separation from the nearest poultry shed to approximately

² *Royal Forest and Bird Protection Society of New Zealand Inc v New Zealand Transport Agency* [2024] NZSC 26

³ *Dye v Auckland RC* [2002] 1 NZLR 337 at [32]

110 m (now shown dimensioned on the amended scheme plan). Soil suitability and geotechnical testing will be demonstrated at the building consent stage.

- (b) *No-complaints covenant*: condition 28 has been amended to remove the reference to Lot 3 and to more clearly describe the reverse sensitivity effects its intended to address.
- (c) *Condition 18(g) (planting)*: existing vegetation on Lots 1–4 to be enhanced or retained as described above, strengthening the screening mitigation.
- (d) *Easement*: an easement for existing powerlines servicing Lot 3 will be created over Lot 4.

9. In closing

9.1 For the reasons set out in these submissions, in the primary legal submissions, and in the Applicant's evidence, the Applicant respectfully submits that:

- (a) The adverse effects of the proposal are acceptable or are appropriately mitigated by the conditions volunteered and accepted (including as amended in the Applicant's Reply).
- (b) The proposal is sufficiently consistent with the relevant objectives and policies of the PODP.
- (c) The Commissioner's questions are satisfactorily resolved by the evidence and the Applicant's Reply amendments.
- (d) Subdivision consent SUB21/47978 and land use consent LUC26/48992 should be granted subject to the conditions set out in the Applicant's conditions schedule (as amended).

Dated: 29 July 2026



L P Wallace, Counsel for the Applicant