**NEW PLYMOUTH DISTRICT COUNCIL**

**DECISION OF INDEPENDENT COMMISSIONER**

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| **IN THE MATTER OF:** | The Resource Management Act 1991 |
| **AND** | An Objection lodged pursuant to section 357A of that Act against the Council's refusal of a non-notified subdivision consent for 118 Wortley Road, Lepperton SUB22/48013 |

**Summary of Decision:**

The objection relates to the refusal of a non-notified subdivision consent for a two-lot subdivision SUB22/48013, 118 Wortley Road, Lepperton.

I hereby uphold the objection and grant consent to the subdivision consent SUB22/48013, subject to the conditions in Appendix A.

**Hearing Details:**
The objection was heard by Independent Commissioner Gina Sweetman on 17 December 2025 by way of remote link.

**Parties Present at the Hearing:**

- **For the Objector:** Mr. SWA Grieve, Counsel
  Mr. Chris Rendall, Planning Consultant
  Mr. Aaron and Ms. Tara Stephens, Applicant/Objector

- **For New Plymouth District Council:** Ms. Nicola Laurenson

## 1 Introduction

1. I was appointed under delegated authority by the New Plymouth District Council (the Council) to hear and determine the objection lodged by Mr. Rendall on behalf of Mr. and Mrs. Stephens (the objectors or the applicants) on 19 May 2025. The objection is against the refusal of the non-notified subdivision consent application by Mr. Richard Watkins, the Council's Principal Planner, under delegated authority (the Objection). The application site is located at 118 Wortley Road, Lepperton, New Plymouth.

## 2 Background

2. The Objection arose from a non-complying resource consent application lodged by the objector (SUB22/48013) to undertake a two-lot subdivision, on land containing or adjoining a natural waterbody. The consent was processed by Ms. Laurenson, Consultant Planner, and subsequently refused on a non-notified basis under delegated authority by Mr. Watkins, a Council officer acting under delegated authority on 1 May 2025.

3. The decision report states that the application refused consent for the following reasons:
    a) *The proposal is contrary to the policies and objectives of the Operative New Plymouth District Plan and Proposed New Plymouth District Plan.*
    b) *In particular the strategic direction to limit the number of allotments created from 'Parent Titles' and avoidance of residential and lifestyle activities not associated with Rural Production Activities in the Rural Environment Area/ Rural Production Zone.*
    c) *The proposal has potential to result in a loss of productive capacity of the subject land over the long term and the proposal does not meet the requirements of Clause 3.8(1)(a) in the National Policy Statement for Highly Productive Land.*
    d) *The proposal is partially inconsistent with the Taranaki Regional Policy Statement.*
    e) *Granting the proposal would set an inappropriate precedent for potential future 'like' applications and undermine the integrity of the Operative New Plymouth District Plan and Proposed New Plymouth District Plan.*
    f) *The effects of the proposal on the environment will not be more than minor but a greater regard is considered to be appropriate to be had to the objectives and policies of the Operative New Plymouth District Plan and Proposed New Plymouth District Plan which each set out the strategic intent for the sustainable management of natural and physical resources within the District.*
    g) *The proposal is inconsistent with the purpose and principles of the Resource Management Act.*

## 3 The Grounds for Objection

4. The Objection was lodged with Council on 19 May 2025.

5. The Objection is seven pages in length and responds to the Council's decision. The matters traversed, in summary, are:
    - On receipt of further information, the Council stated the application would be declined, before any assessment had been undertaken.
    - The Council did not take the opportunity to be clear about its concerns with the proposal and the key matters for declining consent could have been avoided or mitigated. The applicant would have amended the scheme plan and agreed to consent conditions to address the concerns if they had been aware of them
    - There is disagreement about the ability of the land to be used for primary production and the effect of the activity on the productive capacity of the land
    - The Council decision maker was not provided the opportunity to consider granting the consent as no consent conditions were put forward for consideration

- It is unclear that fragmentation is an effect on the environment
- If there was a concern about fragmentation of the rural land resource, the applicant would have commissioned expert evidence
- Conditions could have been imposed to prevent additional non-residential activities from occurring on the site
- Previous subdivision and the land use decision for a second dwellings should not be relitigated
- It is agreed that the proposal will not result in more than minor adverse effects on the environment, and the proposal meets one of the two gateway tests under s104D and can therefore be granted
- The second dwelling forms part of the existing environment
- The s42A fails to provide evidence that small lots in rural New Plymouth are uncommon, inconsistent with rural character or should be avoided
- The Applicant is happy to reduce the lot size from 3,000 to 1,000$m_2$ if that is considered a more sustainable use
- There are numerous other lots on Wortley Road that are approximately 2,000$m^{2,}$ with the smallest being 809$m^2$
- A broadbrush comment about inconsistency with regional urban expectations is unhelpful
- No material changes are proposed, with the subdivision simply formalising the ability of the dwellings to operate independently
- Objective 4 and policies 4.1, 4.2 and 4.5 do not use directive words such as avoid or prevent any and all subdivision in the rural environment which the PNPDP does not provide for. The controls they provide need to be in the context of the existing environment, that there is no large balance area and substantial existing development along this road. While on face value there are inconsistencies with these policies, they need to be considered in the context of the existing environment
- Object to a perceived assertion that the consent cannot be granted because the provisions of the District Plan and RMA process prevail over the environmental effects of the activity
- The decision inappropriately approaches the policies as it they are rules to prohibit subdivision
- If the PNPDP's intent was that the subdivision of smaller rural lots be prohibited, then that activity status should have been used
- Applications should be considered on their own merits and contexts; the differentiation between this site and other small rural lots had been highlighted to the Council
- There are not significant numbers of small rural lot with two fully independent consented dwellings, and the Plan contains provisions to prevent the proliferation of this in the future. Future consents that are granted can be accompanied by appropriate conditions to prevent further subdivision or development if the Council deems this appropriate
- It is more consistent with the purpose of the RMA to give these applications a fair hearing and for decision makers to consider granting consent, especially where there is a housing shortage and home ownership is an aspiration for many
- Leaving the second dwelling unused as suggested in the Council report would be an inappropriate (inefficient and ineffective) use of a limited resource and contrary to the expectations of the Tier 2 district to enable housing

- That the lot does not fully align with all plan policies is unlikely to result in the general public thinking the proposal is unreasonable or inappropriate. It is more logical that the public would have little concern
- Declining the application is likely to be seen as a lack of pragmatism and based on protecting the status quo over achieving the RMA's purpose.

6. I note that there was no contention in respect to the other reason for consent, being the subdivision of land containing or adjoining a natural waterbody under Rule WB-R5 of the PODP. Accordingly, I have not addressed this matter in this decision.

## 4 Statutory Framework

7. Section 357A of the RMA provides applicants with the right to object to a consent authority's decision:

> *357A Right of objection to consent authority against certain decisions or requirements*
> *(1) There is a right of objection to a consent authority,—*
> *…*
> *(g) in respect of the consent authority's decision on an application or review described in subsections (2) to (5), for an applicant or consent holder, if the application or review was not notified.*
> *(2) Subsection (1)(f) and (g) apply to an application made under section 88 for a resource consent. However, they do not apply if the consent authority refuses to grant the resource consent under sections 104B and 104C. They do apply if an officer of the consent authority exercising delegated authority under section 34A refuses to grant the resource consent under sections 104B and 104C.*
> *…*

8. This Objection falls under s357A(1)(g) as the application was made under s88, was non-notified and the decision to refuse consent was made by an officer of the consent authority exercising delegated authority.

9. Section 357AB sets out that an objector under s357A(1)(f) or (g) may request the objection be heard by an independent commissioner

> *357AB Objection under section 357A(1)(f) or (g) may be considered by hearings commissioner*
> *(1) An applicant for a resource consent who has a right of objection under section 357A(1)(f) or (g) (as applied by section 357A(2) to (5)) may, when making the objection, request that the objection be considered by a hearings commissioner.*
> *(2) If a consent authority receives a request under this section, the authority must, under section 34A(1), delegate its functions, powers, and duties under sections 357C and 357D to 1 or more hearings commissioners who are not members of the consent authority.*

10. Section 357C sets out the procedure for making and hearing objection under sections 357 to 357B:

*357C Procedure for making and hearing objection under sections 357 to 357B*

*(1) An objection under section 357, 357A,or 357B must be made by notice in writing not later than 15 working days after the decision or requirement is notified to the objector, or within any longer time allowed by the person or body to which the objection is made.*

*(2) A notice of objection must set out the reasons for the objection.*

*(2A) A notice of an objection made under section 357A(1)(f) or (g) may include a request that the objection be considered by a hearings commissioner instead of by the consent authority.*

*(3) In the case of an objection made under section 357 or section 357A, the person or body to which the objection is made must—*

*(a) consider the objection within 20 working days; and*

*(b) if the objection has not been resolved, give at least 5 working days' written notice to the objector of the date, time, and place for a hearing of the objection.*

11. Section 357CA sets out the powers of a hearings commissioner(s) considering an objection under s357A(1)(f) or (g) as follows:

*357CA Powers of hearings commissioner considering objection under section 357A(1)(f) or (g)*

*(1) This section applies if a hearings commissioner is considering an objection made under section 357A(1)(f) or (g) (*see *section 357AB).*

*(2) The hearings commissioner may do 1 or more of the following:*

*(a) require the person or body making the objection to provide further information:*

*(b) require the consent authority to provide further information:*

*(c) commission a report on any matter raised in the objection.*

*(3) However, the hearings commissioner must not require further information or commission a report unless he or she considers that the information or report will assist the hearings commissioner to make a decision on the objection.*

12. Finally, s357D sets out the requirements for decisions on objections:

*357D Decision on objections made under sections 357 to 357B*

*(1) The person or body to which an objection is made under sections 357 to 357B may—*

*(a) dismiss the objection; or*

*(b) uphold the objection in whole or in part; or*

*(c) …*

*(2) The person or body to which the objection is made must, within 15 working days after making its decision on the objection, give to the objector, and to every person whom the person or body considers appropriate, notice in writing of its decision on the objection and the reasons for it.*

*…*

## 5 Procedural Matters

*Decision and approach*

13. My decision is whether to uphold, uphold in part or dismiss the Objection. Should I uphold or uphold the Objection in part and grant the consent, my decision replaces that of the Council.

14. My approach to this Objection is by way of "exceptions" where I have focussed on the matters in contention/dispute between the two parties, rather than undertaken a full re-evaluation of the entire Application. In that regard, this decision should be read in conjunction with the Council's first section 42A report. As I have noted earlier, there was no dispute in respect to Rule WB-R5. Similarly, I have not addressed the offered covenant with Tegel Foods Limited.

*Documentation*

15. Documentation of the Application, Council decision, the Objection, Objector and Council's evidence, information, minutes and legal submissions relating to this Objection are held by the Council.

*Council decision*

16. As I have already outlined, the non-complying subdivision consent application was refused consent on a non-notified basis under delegated authority on 1 May 2025.

*Pre-hearing Matters*

17. I issued Minute 1 on 17 October 2025. In this Minute I:
    - Set out my initial position that a hearing would need to be held, that this could be held online and set a hearing date of 17 December 2025.
    - Posed four questions for the Objector and Council to respond to
    - Set directions for the pre-circulation of evidence in advance of the hearing

18. I issued Minute 2 on 4 November 2025, in response to a memorandum from the Objector's Counsel seeking engagement with the Council on an alternative scheme plan and suite of conditions and offering expert conferencing prior to the hearing, as well as the provision of any further information necessary. It records that I consider these initiatives would be productive but outside of my power to direct, and my encouragement for the two parties to engage with each other.

19. I received all evidence and submissions with the timeframes set out in Minute 1.

20. Ms. Laurenson and Mr. Rendall produced a joint witness statement (JWS), dated 14 November 2025. Its focus was on the alternative scheme plan and suite of potential conditions. Both planners agreed that the Part Operative New Plymouth District Plan (PODP) is the only relevant District Plan to be considered and the Operative District Plan falls away. Key points traversed through the JWS were:
    - Continued disagreement about the weight to be afforded to the PODP's objectives and policies compared to environmental effects
    - That Ms. Laurenson prefers the original scheme plan, as:

    - the area of Lot 1 becomes smaller (2,940 to 1,245m$^2$), with the minimum lot size in the Rural Production Zone (RPS) being 4.000m$^2$
    - Lot 1 as originally proposed will better allow for activities compatible with the role, function and predominant character of the RPS
    - A smaller lot size will increase the probability that the site is used for residential purposes only and not linked to rural activity
- That Mr. Rendell prefers the new one as:
    - They both contain inconsistencies with the PODP
    - Both have less than minor adverse environmental effects
    - It consolidates the area available for primary production within a single lot
    - It maintains existing land use, involving two independent residential units, one of which is associated with rural activities, the other with no connection to rural activities
    - It is not inconsistent with surrounding lot size and is a good fit within the surrounding environment
- In respect of conditions, they disagreed as follows:
    - Ms. Laurenson sought a condition to reinstate the vehicle crossing and gate along the northern boundary of Lot 1, so it is not adjacent to the outdoor living space for Lot 1 which is bound by a no-complaints covenant. She considered its location conflicts with RPOZ-P3
    - Mr. Rendell does not agree as it is not uncommon for vehicles to pass in close proximity to properties in rural and urban areas, the existing access is infrequently used.
- They otherwise agreed to the appended conditions, which included two consent notices which would:
    - Restrict both Lots to one residential unit per allotment
    - Prevent any further subdivision of both lots
    - Require a “no-complaints” covenant on Lot 1

21. One key matter confirmed in the planners JWS is that the alternative scheme plan is now the one sought by the Applicant.

22. I received Ms. Laurenson’s s42A report and response to the questions I posed on 3 December 2025. The report was approved for release by Mr. Watkins. Ms. Laurenson recommended that the Objection be dismissed, for the same or similar reasons the subdivision consent was refused. She considered the reduced size of Lot 1 proposed by the Objector would not change the lack of consistency with the objectives and policies, would solidify the inability of Lot 1 to be associated with rural productive activities and create a potential land use conflict where future residents would be exposed to farming activities. The policy intent to avoid activities that are incompatible with the role, function and predominant character of the RPROZ outweighs the level of adverse effect associated with the activity the plan seeks to avoid. Should consent be approved, the no complaints covenant condition should be imposed and the vehicle entrance to Lot 2 should be moved to mitigate amenity effects on Lot 1.

23. Ms. Laurenson also provided commentary about two other similar subdivision applications it had received, both creating small lots with their own accesses, which had been either withdrawn or refused consent. She also set out the findings from an exercise to identify other titles in the RPROZ which are less than 20ha and contain two dwellings. This exercise identified approximately 423 titles.

24. In summary, her answers to my questions were:
    - The ODP permitted a second dwelling on a site less than 20ha and anticipated by the policies. A second dwelling was to be ancillary to the main habitable building on the site and not lead to increased pressure to subdivide
    - The subdivision will change the character of Lot 1, by severing the relationship of the dwelling with the rural land holding and rural land use
    - Under the PODP, a second dwelling would be consistent with the objectives and policies if it is ancillary to rural activities. The subdivision of a second dwelling would sever the relationship between the unit and its ability to be compatible with the objectives and policies
    - Section 232 RMA allows for the creation of a wider esplanade strip, as proposed
    - The existing land use consent would not be required if the subdivision consent is approved, as there would only then be one dwelling per lot. There are no other permitted activity rights for residential units or minor residential units, but an additional sleepout would be permitted
    - She agrees to the two offered conditions being included in the condition set on an Augier basis. Notwithstanding, a consent condition should not fetter a landowner's right to apply for future resource consents. The landowner could apply to remove the conditions, with any future consent assessed on its merits. Removing the offered conditions would make the original consent ineffective.

25. The Objector provided evidence on 9 December 2025 from:
    - Tara and Aaron Stephens, the Applicants
    - Martin and Jessica Cudmore, the tenants of the second dwelling
    - Branden Darlow
    - Chris Rendall

26. Mr. Grieve filed legal submissions on 15 December 2025.

27. The Applicant's and their expert and counsel's evidence covered the following matters, in summary:
    - The Applicant's purchase of the land in 2015
    - The original property was a house and 1 acre section, but the previous owner did a boundary adjustment to include a paddock
    - The application in 2017 to build a second dwelling was transparent about the future intent to subdivide off the second dwelling
    - The completion of the second dwelling in 2019, retaining a rural outlook and feel and separate services
    - The ongoing operation of the site as a small lifestyle block, which is to continue
    - Both dwellings are self-contained and independent, with a clear physical separation. The second (original) dwelling is tenanted and is not at all associated with the cattle-raising occurring on site
    - The only occasional use of the main access point to where the beef cattle are run
    - Delays in the consenting process since lodgement in 2020 and getting to an objection hearing
    - Amendment to the scheme plan, to provide more paddock space
    - The subdivision will not materially change the overall land productivity, with the subdivision retaining 99% of the site's long-term productive potential in terms of pasture production and sustaining the same number of animals
    - There is only a loss of 365m$^2$, or 0.03ha of Land Use Class (LUC) 3 land, which is 0.0001% of the District's LUC3 land

- The subdivision meets Clause 3.8 of the NPS-HPL, long-term production is retained, cumulative loss is avoided and reverse-sensitivity effects avoided
- There are multiple similar-sized lots in proximity to the site that are not associated with rural production
- The Council have placed insurmountable weight on policies which have limited relevance to the specific context of this application, where the adverse effects are greed to be no more than minor
- The assessment of the Application against the policies is flawed because it focusses too much on an idealised rural environment rather than the existing one
- Ms. Laurenson has inappropriately applied policies which are directed at new activities rather than a subdivision to separate existing rural activities from non-rural activities, and her approach would result in the prohibition of most activities on rural land and prevent rural subdivision
- The activity is anticipated and provided within the Zone
- The Application should be considered on its merits rather than a desktop review of plan policies
- The proposal is not repugnant to, opposed to or contrary to the thrust of the POPD' objectives and policies evaluated holistically
- The precedent and plan integrity arguments are not substantive enough to be compelling rationale to refuse consent
- Ms. Laurenson should not make a statement regarding the outcome of a statutory process and should not assert what a decision maker should have greater regard for (1.9(g))
- There is nothing in the s42A which supports the assertion that the Application is inconsistent with Part 2
- Part 2 may add little to the evaluative exercise given the PODP provisions are recent, generally coherent and unlikely to add much to consideration
- There are positive effects from the proposal, the adverse effects are insignificant due to the existing land use activities, and the subdivision effects are primarily lines on paper
- The s42A report should be given little weight because of the number of flaws, inaccuracies and narrow approaches in it
- The subdivision will not enable a more intensive use of the site than what was allowed by the land use consent now implemented. It will simply enable titles to be issued for the two lot on which two dwellings are already lawfully constructed
- There are no cumulative adverse effects arising
- A consent authority is not bound by a previous decision, the facts and circumstances are never likely to be the same due to the many variables
- There is no evidence to support a finding of high probability of future subdivision of other similar sized lots
- Granting consent would not undermine the PODP
- There are no reverse sensitivity effects at play
- Ms. Laurenson's contention that the conditions and consent notices offered would be unwound in the future is not accepted. It would need to be shown there was a material change that justified any variation

28. Legal submissions records mitigation offered and/or agreed on as being:
    - Increasing the size of the esplanade strip
    - Landscaping and native vegetation planting of 5m along the stream edge, along with fencing and stock exclusion

- Limitations on the number of habitable buildings per lot and future subdivision
- Balance area of 3.18ha for Lot 2 maintaining the rural open character and ability to productively farm without the loss of highly productive land (HPL)
- No complaints covenants (and consent notice) regarding rural activities and operations.

29. Minute 3 dated 12 December 2025 confirms that the hearing could proceed online and without the need for a site visit, sets the order of appearances, the hearing process, and excuses three of the Objector's witnesses from appearing.

30. Minute 4 dated 15 December 2025 responds to the Objector's legal submissions, requesting the provision of case law cited in submissions. I also request parties to address whether *Rogers vs Christchurch City Council* [2019] NZEnvC 119, relating to the refusal of consent to a non-complying activity, is a relevant case with any relevant finding.

31. Counsel for the Objector provided a Memorandum on 16 December 2025 in response to my Minute 4, setting out a summary of the New Zealand Defence Force v Selwyn District Council [2025] NZEnvC 210 case regarding the use of no-complaints covenants and reverse sensitivity effects. In particular, it notes that condition 15 of the draft conditions appended to the planners' JWS would require modification to ensure it was limited to matters relating to the RMA.

*Hearing*

32. The hearing was held online on the morning of 17 December 2025.

33. The hearing commenced with the Objector's presentation. Key points expressed by the Objector in addition to those in evidence were:
    - There are no policies that indicate the avoidance of use of exiting residential dwellings
    - The effects of the subdivision are nil, as effects of the land use consent granted are already part of the existing environment
    - In respect of the Rogers vs Christchurch City Council case, it had been occurring on the land without consent
    - There is no requirement for a second dwelling to be associated with the primary dwelling
    - The PODP limits establishment of new residential activities in the Rural Zone, to minimise proliferation of subdivision that would impact on production
    - The Applicant is happy to have consent notices on titles to minimise and avoid that risk.

34. I then heard from Ms. Laurenson, whose key points were:
    - The proposal is a non-complying activity based on the parent title date. The size of an allotment from a specific date is a valid tool
    - The Rural Production Zone (RPROZ) objectives and policies are clear that the zone is predominantly used for primary production. Subdivision severs that relationship, departing from the parent title
    - It is appropriate to assess cumulative effects and change over time. It is the 8$^{th}$ small allotment not associated with the parent title

- She accepts Mr Darlow's evidence on productive capacity, but that evidence does not reconcile consistency with the objectives and policies
- The reasons consent was declined in the Rogers case was similar to this one, in terms of consistency with the related objectives and policies, precedent and district plan integrity
- In respect of the land use consent for the second dwelling, it was explicit that it was for a second dwelling, ancillary to the primary dwelling. The land use consent was for an increased separation distance. The subdivision will sever the relationship between the two dwellings
- The ODP was explicit in its management strategy that second dwellings were to be related to each other, and one ancillary to the other. Currently the second dwelling is ancillary, managed as a rental property by the owners
- She does not think the consent notices are strong enough, as an application can be made to change them in the future
- If a covenant is to be used, it needs to be strengthened, and the Council would want to see the wording.

35. Ms. Laurenson helpfully provided her speaking notes, which are available from the Council.

36. I then provided an opportunity for a discussion between the two planners, responding to my questions. Key points made were:
    - Mr. Rendell considered that there are specific circumstances, with this being a small sized lot already. There are other comparable sized lots in the area. It is inappropriate to constrain people's ability to apply for consents. The subdivision would not result in intensification. There may be other sites with comparable situations
    - Ms. Laurenson was of the opinion that there would be lots of applications that have acceptable adverse effects that can also be incompatible with the objectives and policies. Also, there are lots of applications that are unique in terms of effects while not being dissimilar to each other. She questioned if one application goes through, then do they need to weight the adverse effects higher each time
    - Mr. Rendell stated that he had not relied solely on effects, and he had provided context around objectives and policies. This application is not comparable to a vacant lot subdivision, which would clearly be inconsistent with the objectives and policies
    - Ms. Laurenson reiterated that the second dwelling was ancillary in the 2017 consent and that she was not comparing the situation to a vacant lot. Her concern was that many other applications could also pass through the effects test. She pointed out that RPROZ-P3 is to avoid second dwellings that are not associated with rural activities. The subdivision objectives and policies defer to the zone about what is appropriate.

37. At the end of hearing from both parties, Counsel for the Objector requested that the hearing be adjourned with a written reply to be provided by 30 January 2026.

*Post hearing*

38. I recorded the adjournment of the Hearing on 17 December 2025 in Minute 5. In the same Minute I request that the Reply includes any updated draft conditions that Ms. Laurenson has had the opportunity to review and comment on.

39. I received the Objector's Reply, including a closing statement from Mr. Randell and final legal submissions from Mr. Grieve on 30 January 2026. The key matters traversed in the Reply from Mr. Rendell are:
    - There are two distinct residential units on the title, a second residential unit is not ancillary to rural production activities, neither is ancillary to the other as they can operate independently and there is no specified principal residence
    - The only new activity is subdivision of a non-ancillary dwelling from a rural productive property
    - RPROZ-O2 uses the term "predominantly used for primary production", not exclusively. The existing dwellings give effect to "low density build form with space between dwellings", as acknowledged in the 2017 decision
    - Consent notices will limit future development and will supplement and reinforce the drafting in the PODP and avoid inconsistencies in the future
    - Ms. Laurenson's assessment of this being the 8th lot not associated with rural production activities is incorrect. There have been many changes to the titles over time, but they haven't all been for creating small lots not associated with rural production
    - The subdivision should not be likened to an urban one
    - The RPROZ policies need to be considered in context, particularly where the effects and activities they are seeking to avoid are already existing
    - If the application was creating the potential for the proliferation of non-rural production activities, then RPROZ-P3 and the intent to avoid would be key; however, in this case RPROZ-P1 should be given more weight as the existing activities have been shown to be compatible with the RPROZ
    - Not granting consent would have a significant effect, effectively establishing a prohibited activity rule, and less applications being considered on their merits
    - SUB-P10(2) and (3) provide a clear pathway and (04) is not relevant as these matters have been addressed. SUB-P10 does not specify how many additional titles can be created
    - Having "allow" and "avoid" policies for the same activity creates an inherent conflict and uncertainty
    - The PODP now has adequate mechanisms in pace to control the potential for small rural lots to have two independent dwellings on them, minimising precedent risk. There is nothing in the 2017 consent that indicates or asserts that the new or old dwelling would be ancillary
    - Lot 1 was previously part of its own 4,200m$^2$ parcel in 2007 and was then integrated into the current parcel in 2012. The subdivision would simply return Lot 1 to a smaller area, but rather than removing the area from primary production, would retain the paddock with the balance lot
    - Updated consent conditions to address Ms. Laurenson's concerns

40. Mr. Grieve's submissions covered:
    - That fact and context will be important in determining how tensions between policies will be resolved
    - Ms. Laurenson has taken a narrow approach targeting certain policies which in her view are strict avoidance policies fatal to the application. She has not taken into account the non-ancillary rural productivity use of the older dwelling, and her evidence does not comply with the Environment Court's code of conduct in terms of considering material facts that might alter or detract from her opinions

- Part 2 remains open for consideration if I find that relevant policies are difficult to interpret in the facts, circumstances, evidence and consent of the case
- Ms. Laurenson's assertions that granting consent would open the floodgates to "tonnes" of applications are not accepted and unfounded from the evidence. Similar is the assertion and speculation that the consent notices can be easily varied and/or cancelled
- In terms of precedent, no cases are likely ever the same. There are many variables in respect to this application, such as topography, the existing environment, the design and layout, the ability to mitigate potential adverse effects
- This proposal can be seen as a "true exception" in the sense discussed in Rodney District Council v Gould
- Matters relating to the site layout, topography, and the 2017 application, including the express record that "the habitable building will be used for residential purposes and will be consistent with the surrounding activities". There is nothing in the planning report that requires them to be ancillary.

## 6 Areas of agreement between the parties

41. Having reviewed all the evidence, I record the areas of agreement between the parties:
    - The total allotment size is 3.312ha (surveyed)
    - The site is located in the RPROZ of the PODP. The ODP is no longer a relevant consideration
    - The application for subdivision is a non-complying activity under Rule SUB-R4 – Subdivision of land to create allotment(s) within the Rural Production Zone
    - Any adverse effects on the environment would be no more than minor, and the consent can therefore pass the s104D(1)(a) test to be considered under s104
    - The proposal would result in the loss of 0.03ha of productive land, and is consistent with the NPS-HPL
    - There are two dwellings on the site. The newer dwelling is associated with rural production. The older dwelling is tenanted and is not associated with rural production.

42. The Application is a non-complying activity under SUB-R4 because:
    - It is a subdivision of a record of title that has an issue date after 5 March 1999 and it is proposed to create more than 3 additional allotments from the parent title
    - The proposal does not have a balance area of 20ha
    - Lot 1 is less than 4,000m$^2$
    - The dwelling on Lot 1 will be located less than 10m from the new north boundary with Lot 2 (15m is required)
    - Sight distances from the existing Lots 1 and 2 entrances do not comply with the Transport Chapter requirements
    - A 20m wide esplanade strip is required; the existing 10m wide esplanade strip is to be increased to 15m.

43. The revised Application that I am now considering is for:
    - Lot 1 containing the older existing dwelling with an area of 1,245m$^2$ (an area of 2,940m$^2$ was initially proposed)
    - Lot 2 containing the new existing dwelling resided in by the Applicants of 3.18ha. An area of 3.0165ha was initially proposed.

## 7 Matters in contention

44. The contention between the parties is the consistency of the proposal with the PODP's objectives and policies, and the weight that should be afforded to them. The following points from paragraph 9.28 of Ms. Laurenson's s42A Objection Report in summarise how she has approached her consideration of the Application under s104(1) and why she placed more weight on the plan policies and precedent:

> *On this note I wish to reiterate the following points:*
> - *Section 104(1) adopts an open-ended approach to the weight that is to be attached to the relevant matters. It is open to a decision-maker to decide that the absence of adverse effects is not determinative, and that the enquiry should be made whether the proposal would achieve the objectives of the plan.*
> - *Controlling rural subdivision (including its cumulative effects) is an issue of significance to the district and that this sometimes requires the principled application of policy. In this case the proposal is contrary to plan policy for rural subdivision and the Rural Production Zone.*
> - *The decision to refuse consent essentially turned on greater priority being given to objectives, policies, precedent and plan integrity over the lack on any unacceptable adverse effects. This decision is one which was open to the Council based on the facts and the legal framework.*

45. I have focussed my decision on the matters of contention between the parties, being:
    1) whether the second dwelling on the site is, or is required to be, ancillary to the first dwelling
    2) the level of consistency with the relevant objectives and policies of the Taranaki Regional Policy Statement 2010 (RPS)
    3) the level of consistency with the relevant objectives and policies of the PODP, and District Plan integrity
    4) whether granting consent would result in a precedent
    5) whether consent notices and covenants as conditions are certain enough to mitigate potential future effects
    6) the draft recommended conditions

46. I deal with the status of the dwellings on the site and the RPS first. I have then set out the relevant evidence for matters 3 to 5, which I then evaluate together. I then finally turn to matter 6.

47. I note that in her s42A decision and objection reports, Ms. Laurenson expresses concern about the cumulative adverse effects of the proposal relating to fragmentation of the parent title. Mr. Rendell's position was that this is inappropriate to attempt to relitigate whether previously granted consents should have been granted and that the effects being considered should be limited to those attributable to the current proposal. Ms. Laurenson in her hearing notes refutes this, saying it is appropriate to assess the cumulative effects as incremental change over time can lead to the erosion of the rural environment. Her view is the Rural subdivision rules create a "line in the sand" to additional lot creation. I had no evidence before me that granting consent to this Application would be the "straw that breaks the camel's back" in respect to the effects of rural lot fragmentation. Similarly, the RMA and the PODP provides for people to lodge consents for non-complying activities and for these applications to be assessed on their

merits, subject to meeting the S104D tests. I find that the matter that Ms. Laurenson raises is more attributable to s104(1)(b) and consistency with the PODP's objectives and policies rather than one of s104(1)(a) and the effects of the Application itself.

48. I also note that there was contention about the number of additional allotments to be created from the parent title, which is a consideration under SUB-R4 (three additional small lots can be created from a parent title as a discretionary activity, provided there is a 20ha balance lot). Ms. Laurenson considered that this would be the 8th additional small allotment created, Mr. Rendell considered it to be fewer. While there was dispute, it was clear that the proposed subdivision would fail to comply against other relevant Rule requirements/conditions regardless, particularly considering Lot 1 is proposed to be less than 4,000m$^2$ and Lot 2 is less than 20ha. And, irrespective if whether it is the 8th additional small allotment or not, the PODP still provides for an application for a non-complying activity to be made.

*Status of the dwellings on the site*

49. It is evident that Ms. Laurenson had placed significant weight on the second dwelling on the site being ancillary to the first dwelling. I took her concern to be that the ODP had required the dwellings to be related to each other, and the subdivision would sever that relationship. She referenced commentary from the ODP Management Strategy, which applied at the time the 2017 consent was granted, that referred to restrictions being placed on an additional habitable buildings to ensure that rural character is maintained, and required one habitable building to be smaller to the other to acknowledge it being secondary to the primary use, and the requirement for the buildings to be located close to each other. The intent was to ensure that the additional habitable building remained ancillary and did not lead to increased pressure to subdivide, when area requirements are not met. Her position is that the dwelling on Lot 1 is currently ancillary to the larger dwelling and it is being actively managed as a rental by the owners of the property, and it is not a standalone independent dwelling.

50. Ms. Laurenson confirmed that a second dwelling was permitted on sites less than 20ha where gross floor area and separation distance standards were met. Land use consent was required in respect to separation distance. Mr. Rendell agreed with this.

51. The Applicant's position was that there was nothing in the 2017 consent to determine that the dwellings were or are ancillary or were required to be remain ancillary, and that they are operating as two distinct, independent dwellings. The older dwelling is not associated with primary production activity on the site and is tenanted out by the Applicants.

52. Having reviewed Rule Rur12A of the ODP and the land use consent granted in 2017, I concur with the Objector that there is nothing in the ODP or the consent that requires the second habitable dwelling to be ancillary to or associated with the first dwelling.

53. The only restrictions for a second dwelling under Rur12A relate to separation distance and gross floor area, with no standard requiring that it be ancillary to the first and used for primary production activities. However, the matters to be considered for a discretionary activity consent do include:
    - The effect of the increased number of habitable buildings on rural character
    - The design and location

- Whether the placement and location could result in inappropriate subdivision applications
- Whether the larger size or increased separation distance would result in the second building being used independently
- The extent to which the second building is located to be able to be subdivided to meet conditions for buildings
- The extent to which the second building supports the existing building and the extent to which it is intended to operate independently
- The relationship of the second building to the surrounding land use and whether it is associated with a productive land use.

54. I viewed the original Application to the Council made in May 2017. The Application is very clear about the Applicant's intentions:

> *"we wish to erect an additional dwelling on the property…*
> *The larger new dwelling site and size were chosen to have full independence from the current swelling [sp] on the property.*
> *The current swelling may be unused when the new build is completed.*
> *We plan to have separate services to the new dwelling…*
> *The new dwelling has been located in a position that could be able to be subdivided in the future. The new dwelling is located in the south corner of the property which allows for most options to be considered i.e. an acre of land with the new dwelling or even perhaps extensions of boundary south west to the river".*

55. It is very clear to me that the Applicant's intent was to erect a second, independent, residential dwelling on the site, which would be then occupied by the Applicant, who could continue to undertake primary production activities. It was also clear that the first dwelling may be unused, was to be operated independently if used, and would not be associated with primary production activities on the site. It was also clear that the Applicant's intent was to subdivide some point in the future, even if that might be a non-complying activity.

56. The decision states that the habitable building will be used for residential purposes and consistent with surrounding activities, and the farming activities on site will not be disrupted and will be able to continue. It goes on to say that the proposed building is compatible with the character of the area, and the effects on the existing level of amenity within the immediate rural environment area to be acceptable. Of note is the reference that any application to subdivide the new dwelling in the future would be a non-complying activity. There is no assessment provided as to whether it would be ancillary to the first dwelling, whether it would be used independently or associated with a productive land use. There are also no conditions that require the second dwelling to be ancillary to and dependent on the first dwelling or ancillary to a primary production activity.

*Finding on dwelling status*

57. I find that there are two independent residential dwellings on the site, the newer of which is associated with the primary production activity on the site, and the older other is not, and is not required to be. The single issue is that the two dwellings are currently in the sole ownership of the Applicant, and the subdivision would sever that

relationship. I appreciate it may have been the intent of the ODP that a second habitable dwelling be ancillary to the first one, but this does not flow through to the ODP rules or the 2017 consent. I therefore prefer Mr. Rendell's evidence to Ms. Laurenson's.

58. As an aside, I note that under RPROZ-R3 and RPRPZ-S5 of the PODP, only one residential unit per site or one residential unit and one sleep out per site are permitted on sites less than 20 hectares in size. The default is to a restricted discretionary activity status. Matters of discretion relate to residential units sharing a single driveway, effects on rural character and amenity, minimising adverse visual amenity effects, and effects on nearby properties. I found it interesting that matter of discretion 1 reads *"whether it can be demonstrated that the residential unit(s) provides ancillary accommodation for landowners or workers involved with primary production on sites over 20ha".* It is unclear to me why this would not be relevant to sites less than 20ha in size, particularly given the wording of s104C of the RMA which limits consideration of restricted discretionary activities to matters over which it has exercised discretion, as follows:

> *(1) when considering an application for a resource consent for a restricted discretionary activity, a consent authority must consider only those matters over which…*
>
> *(a) …*
>
> *(b) It has restricted the exercise of its discretion in its plan or proposed plan"*

59. It appears to me to be a disconnect between RPROZ-R3 and RPROZ-S5 and RPROZ-P3 which focuses on avoiding activities, including residential activities and rural lifestyle living that are not ancillary to rural activities, that are incompatible with role, function and predominant character of the RPROZ, given that matter of discretion 1 does not apply to sites less than 20ha.

*Relevant objectives and policies*

60. I set out and address the RPS and PODP objectives and policies identified as being in contention below:

*RPS*

*SUD ISS 1*
*Promoting sustainable urban development in the Taranaki region.*
*SUD OBJECTIVE 1*
*To promote sustainable urban development in the Taranaki region.*
*SUD POLICY 1*
*To promote sustainable development in urban areas by:*

*(a) encouraging high quality urban design, including the maintenance and enhancement of amenity values;*
*(b) promoting choices in housing, work place and recreation opportunities;*
*(c) promoting energy efficiency in urban forms, site layout and building design;*
*(d) providing for regionally significant infrastructure;*
*(e) integrating the maintenance, upgrading or provision of infrastructure with land use;*
*(f) integrating transport networks, connections and modes to enable the sustainable and efficient movement of people, goods and services,*

*encouraging travel choice and low-impact forms of travel including opportunities for walking, cycling and public transport;*

*(g) promoting the maintenance, enhancement or protection of land, air and water resources within urban areas or affected by urban activities;*

*(h) protecting indigenous biodiversity and historic heritage; and*

*(i) avoiding or mitigating natural and other hazards.*

61. Ms. Laurenson also quotes the following commentary in respect to Policy (1)(a):

> *Policy 1(a) incorporates concepts of aesthetically pleasing, stimulating and vibrant urban forms and building designs that also function safely and efficiently. High quality urban design creates pleasant living environments free of nuisance arising from excessive traffic, noise, odours and contaminants. This will include the need to avoid encroachment of sensitive activities into rural areas that may result in reverse sensitivity effects on established and legitimate rural activities. It also involves design features aimed at maintaining and further enhancing amenity values.*

62. Ms. Laurenson considered that the proposal is inconsistent with Chapter 15 of the RPS (but not the other provisions) because allowing for residential properties that are not associated with rural production to locate in the rural zone does not promote sustainable urban development, can lessen the efficient of the urban zones and lead to redistribution of resources over time and compromise rural areas. If granted, similar applications could follow and urban areas would not be used in the manner intended. Urban zones are in place to avoid the need for sensitive activities to encroach into rural areas.

63. Conversely, Mr. Rendell's position was that these policies are not appropriate to consider against individual subdivisions. Rather, the intent of them, as noted in Ms. Laurenson's commentary, is to inform district plan development. These were considered within the PODP, so there is no need to revert to them for what is a straightforward subdivision.

*Finding on RPS*

64. I prefer Mr. Rendell's evidence. On the plain reading of the issue, objective and policy, I find that these are at a strategic level and there is nothing substantially directive at a granular level to the consideration of an individual subdivision application. I also concur it is the role of the RPS to inform district plan development. I return to the matter of the encroachment of sensitive activities into rural areas below.

*PODP*

65. The following table sets out the relevant PODP objectives and policies in contention:

| Reference | Text |
|---|---|
| RPROZ-O2 | The Rural Production Zone is predominantly used for primary production. |
| RPROZ-O3 | The role, function and predominant character of the Rural Production Zone is not compromised by incompatible activities. |
| RPROZ-O3 | Maintain the predominant character and amenity of the Rural |

| | |
|---|---|
| | Production Zone, which includes:<br>…<br>2. low density built form with open space between buildings that are predominantly used for agricultural, pastoral and horticultural activities (for example, barns and sheds), low density rural living (for example, farm houses and worker's cottages) and community activities (for example, rural halls domains and schools);<br>… |
| RPROZ-O5 | The Rural Production Zone is a functional, production and extraction orientated working environment where primary production and rural industry activities are able to operate effectively and efficiently, while ensuring that:<br>1. the adverse effects generated by primary production and rural industry activities are appropriately managed; and<br>2. primary production and rural industry activities are not limited, restricted or compromised by incompatible activities or reverse sensitivity effects. |
| RPROZ-O7 | Sensitive activities are designed and located to avoid conflict with primary production and avoid, or mitigate adverse reverse sensitivity effects. |
| RPROZ-P3 | Avoid activities that are incompatible with role, function and predominant character of the Rural Production Zone and/or activities that will result in:<br>1. reverse sensitivity effects and/or conflict with permitted activities in the zone; or<br>2. adverse effects, which cannot be avoided, or appropriately remedied or mitigated, on:<br>a) rural character and amenity values;<br>b) the productive potential of highly productive soils and versatile rural land.<br>Incompatible activities include:<br>1. residential activities (except papakāinga) and rural lifestyle living that are not ancillary to rural activities;<br>… |
| SUB-O1 | Subdivision results in the efficient use of land and achieves patterns of development that are compatible with the role, function and predominant or planned character of each zone. |
| SUB-P1 | Allow subdivision that results in the efficient use of land, provides for the needs of the community and supports the policies of the District Plan for the applicable zones, where subdivision design:<br>3. reflects patterns of development that are compatible with, and reinforce the role, function and predominant or planned character of the zone;<br>4. does not compromise the integrity and planned outcomes for the zone with lot sizes sufficient to accommodate intended land uses;<br>…<br>9. protects highly productive land in the Rural Production Zone. |
| SUB-P10 | Manage the scale, design and intensity of subdivision in the Rural Production Zone by: |

| | |
|---|---|
| | 1. allowing one additional record of title only where there is a large balance area, and where the subdivision design reinforces the role, function and predominant character of the zone;<br>2. managing subdivision that involves multiple small allotments with a large balance area; and<br>3. avoiding subdivision that would compromise the role, function and predominant character of the Rural Production Zone, or is more typical of patterns of development in urban areas. |
| SUB-P12 | Ensure that that subdivision in the Rural Zones results in lot sizes and lot configurations that:<br>1. are appropriate for the development and land use intended by the zone;<br>2. are compatible with the role, function and predominant or planned character of the zone;<br>3. maintain rural character and amenity; and<br>4. are consistent with the quality and types of development envisaged by the zone objectives and policies, including by minimising any reverse sensitivity effects and conflict with activities permitted in the zones. |

66. The two planners had disparate views on the level of consistency with these objectives and policies.

67. Ms. Laurenson largely focussed on Policy RPROZ-P3, SUB-P10 and SUB-P12 in the original decision. Her position was that the proposal is contrary to RPROZ-P3, because the cumulative/excess fragmentation of the proposal cannot be avoided or mitigated, the resultant small lots will be created for large lot residential / small rural lifestyle use and will have adverse effects on the productive potential of highly productive soil and versatile land through fragmentation at a level not anticipated by the PDP. I note that at the hearing, Ms. Laurenson agreed that the proposal would meet the exceptions in the NPS-HPL regarding highly productive land. She did consider that the existing level of amenity in the location of the site would be maintained, however, the subdivision would result in activities that are potentially incompatible with the objectives and policies of the zone and further reducing the land available for primary production. She also expressed concern that reverse sensitivity effects may occur as a result of the subdivision. She notes that Mr. Rendell had found in the AEE that the proposal is inconsistent with the most directive subdivision policies regarding lot size and balance requirements. She reiterated the same positions in her s42A Objection report and during the hearing.

68. In her original decision report, Ms. Laurenson cites the Berry vs Gisborne DC [2010] case where the Environment Court found an application will only be declined on the basis of plan integrity where the proposal irreconcilably clashes with important plan provisions and it is likely further applications which are equally incompatible with the District Plan and materially indistinguishable will follow. Her view was that this Application clashes with the PODP provisions regarding fragmentation and threatens rural character and undermines the role and function of the zone. Her view was that granting consent to this application is likely to be perceived by the public as adversely affecting the Council's consistent administration of the PODP.

69. Mr. Rendell's reply evidence was converse to Ms. Laurenson's position. He identified that the only new activity is the separation by subdivision of a non-ancillary dwelling from a productive rural property. He noted that RPROZ-O2 requires that the Zone is "predominantly" not "exclusively" used for primary production. Further, the 2017 decision found that that Application was consistent with the character of the Zone. He approached the RPROZ and SUB provisions differently, considering that they need to be considered in context, read together, and not like bald statements.

70. In terms of RPROZ-P3, he acknowledged that this policy if taken literally should prevent any subdivision which would result in either the separation of existing independent dwellings or additional residential dwellings which are not ancillary to rural activities. He then discussed the rule framework, stating that it is clearly intended to enable residential activities which are not ancillary to rural activities through standards and rules which provides for subdivision to occur. Context is key when there is not a strict/specific environmental limit expressed in a policy as this which contains the word avoid. His view was that if this proposal was creating the potential for proliferation of non-rural production activities such as enabling a new dwelling, then RPRPOZ-P3 and the intent to avoid would be a key consideration.

71. Mr. Rendell's view was that RPROZ-O1 was more relevant, as the existing activities on the site, through the 2017, were found to be compatible with the RPROZ. Once subdivision had occurred, there would be mechanisms in place through consent conditions to ensure no new incompatible activities would occur. His view is that there are specific facts and context about this Application which make it distinguishable from other non-complying subdivision applications. He also noted that Ms. Laurenson's strict interpretation of RPROZ-P3 would apply equally to discretionary and non-complying activities, due to the same 104 considerations being applicable, as any small lots are unlikely to generate rural production and not be compatible residential activities. Ms. Laurenson's approach would result in a precedent with significant implications for the District.

72. He considered SUB-P10(2) and (3) provide a pathway through and SUB-P10(4) is not relevant as these matters have already been addressed. SUB-P10 does not specify how many additional titles can be created. Again, he considerers Ms. Laurenson's approach to policy interpretation would have greater precedent effect and could effectively result in it only being appropriate to subdivide a single lot from large rural lots where this title has not been subdivided since the parent title. In terms of plan integrity, he considered that there are clearly distinguishable facts and circumstances relating to this application.

*Precedent*

73. Ms. Laurenson discusses the matter of precedent and the PODP in paragraphs 188 to 197 of her s42A report. In paragraph 188 she states that "a precedent reflects the concern that a grant of consent may have on planning significance beyond the immediate vicinity of the site (i.e. how a decision may influence the way in which future applications are dealt with". Her concern is that if consent is granted, other subdivision applications may follow to create small sites, and that this would ultimately impact on the role, function and character of the zone. She disagrees with the Applicant that there are unique aspects of the proposal which create any clear distinction between the subject site and application and other sites and applications. Council has received

similar applications before. She expresses concern that if this application is granted, future applicants could expect consent to be granted based on having two dwellings and on effects alone.

74. Conversely and in summary, it was the Applicant's position that case law is clear that no cases are likely ever the same and there are a range of factors and variables that are to be considered. Mr. Rendell's evidence and Mr. Grieve's Reply set out those factors and variables.

*Efficacy of consent notices and covenants*

75. I have already set out earlier the difference in opinion between the two parties on the efficacy of conditions requiring consent notices and covenants; Ms. Laurenson was concerned that an application could be made at a later date to remove the conditions, rendering them ineffective. Conversely, while acknowledging that an application could be made to cancel or vary them, Mr. Rendell and Mr. Grieve considered them to be robust, as reinforced by the wording of the conditions and advice notes.

76. It is clear from the Selwyn District Council case cited by Mr. Grieve that they are a legitimate and recognised tool that can be used for RMA matters, but that they should not traverse into matters beyond the RMA. I also noted Mr. Grieve's submission regarding varying or cancelling conditions of consent requiring consent notices or covenants.

*Findings on matters relating to the PODP, plan integrity, precedent and consent notices and covenants*

77. I have carefully considered both parties positions set out in evidence.

78. The particular circumstance at play here is the granting of the 2017 consent which specifically provides for the establishment of a second independent dwelling on the site, leaving the first dwelling on site to be used independently and separate to any productive activities occurring on the site. In that consent, the Council found that it would be compatible with the character of the area and consistent with the ODP's objectives and policies, including the role, function and character of the zone. There were no conditions of consent requiring that the dwellings be dependent on each other and that the first, older, dwelling be ancillary to productive activities on the site.

79. Simply put, the Objector proposes to create a new Lot 1 with an area of 1,245m$^2$ around the existing first, older, dwelling, which is not associated with primary production activities on the site. Once subdivided, it would not be associated with primary production activities on the balance Lot 2, and it would not be of a size for rural productive activities to occur on it. The second, newer, dwelling would continue to be associated with primary production activities on Lot 2. A condition is proposed by the Objector that would restrict any subsequent owners of Lots 1 and 2 to one residential unit per allotment and from any future subdivisions. A further condition is proposed to address Ms. Laurenson's concerns about reverse sensitivity, which would restrict owners of Lot 1 from bringing any proceedings for damages, negligence, nuisance, trespass or interference from lawful rural uses on Lot 2.

80. I accept and prefer the Objector's position regarding the efficacy of the offered consent conditions requiring consent notices as set out in paragraphs 28 to 37 of Mr. Grieve's Reply. I concur that a consent notice cannot be readily cancelled, varied or negated and must be consistent with the RMA.

81. In effect, with the offered consent conditions, the only change that would result from granting consent to the Application is that a new title would be created for the first, older, dwelling and ownership would change. In all other respects, the status quo would remain and there would be no future potential for more residential dwellings (or sleep outs or minor residential units) to be established.

82. It is for that reason that I find Ms. Laurenson's argument in the original s42A decision report that granting consent would result in potentially incompatible activities that would impact on the productive potential of highly productive soils and versatile land problematic. There are particular circumstances about this Application that will ensure that no new potentially incompatible activities would establish in the future and that existing rural productivity would not be affected, beyond the theoretical loss of 0.03ha. I say theoretical, as the subdivision is occurring around the existing first dwelling and its curtilage. I do concur with Ms. Laurenson that Lot 1 would be created for large lot / small rural lifestyle use and be smaller than otherwise anticipated for the RPROZ; however, I do not consider this to be fatal to the Application.

83. I understand Ms. Laurenson's concern to really be focused on District Plan integrity and precedent and the concern that granting this consent could open the floodgates for future similar applications, undermining the District Plan's intent.

84. I carefully considered the *Rogers vs Christchurch City Council* case which I asked both parties to comment on. In that case, the Environment Court declined an appeal against the refusal of consent to an unlawfully established commercial activity seeking retrospective approval to establish in a rural zone, with a strong and directive policy framework. The Court found that while the proposal had negligible adverse environmental effects, it directly challenged the directive policies that weighed against consent being granted. I accept Ms. Laurenson's, and the Environment Court's, position that in some instances, such as the Rogers case, more weight can be afforded to relevant planning documents under s104 of the RMA and consent may be refused in those circumstances.

85. In this instance, however, I find that this Application is distinguishable to *Rogers* and there are particular circumstances relating to it that mean that it is not contrary to or that inconsistent with the PODP's objectives and policies that would make it inappropriate to grant consent. There are circumstances relating to this Application that distinguish it from that case, in particular the existence of the two lawfully established independent residential dwellings, with one having no relationship with rural production on the site. In this instance, I do not find the PODP's objectives and policies to be as directive as those in the Rogers case, particularly in the circumstances of this Application.

86. While I acknowledge Ms. Laurenson's concern about precedent effects from granting consent, I prefer Mr. Grieve's position of each application being considered on its own merits. Again, I find that there are circumstances regarding this Application that distinguish from a vacant lot subdivision or subdivision around existing dwellings where

one is ancillary to the other and used in conjunction with rural production activities. Further, the consent conditions offered by the Objector limit any future development potential that would result in potentially incompatible activities from establishing in the future. I turn to those conditions next.

87. Finally, I accept Ms. Laurenson's advice in paragraph 213 of the s42A decision report that recourse is not required to Part 2 RMA.

88. Overall, I prefer Mr. Rendell's evidence and having considered the relevant tests under s104 of the RMA, I find that consent can be granted to the subdivision application for the reasons set out in this decision.

89. In granting consent, I consider it is important to state that I have done so in the context of the particular circumstances relating to the Application, specifically the land use consent for the two independent dwellings on the site, the very small area of rural productive land (0.03ha) that would be notionally removed from Lot 2, and the offered conditions requiring consent notices and covenants. Should these factors not be at play, I would have upheld the Council's decision and declined consent.

*Conditions of consent*

90. The final matter necessary to traverse is that of the draft conditions of consent appended to Mr. Rendell's reply, with a focus to ensure that they are effective and enforceable as to their stated intent. I focus on the two draft offered Augier conditions 14 (restriction on residential development or subdivision) and 15 (no-complaints) and condition 13 as sought by Ms Laurenson to relocate the vehicle entrance to the north of Lot 1 on Lot 2.

91. I have already traversed Ms. Laurenson's concerns about the robustness of consent notices and covenants and found that they are a valid and enforceable tool to be used to avoid or mitigate potential effects. In particular, any application under s127 or s221(3) to cancel or vary a consent condition requiring a consent notice or covenant is treated as a discretionary activity and subject to a robust assessment. In this instance, draft condition 14 requires a consent notice restricting both Lots 1 and 2 to a single residential unit each and any further subdivision of lifestyle or residential lots. I have made minor amendments to the condition for clarity and certainty. I have also amended the advice note so that it is clear that this is an Augier condition, and it applies to any additional residential unit, sleep out or minor residential unit,

92. In respect of the draft no-complaints covenant condition, I found Mr. Grieve's analysis of the Selwyn District Council v New Zealand Defence Force case very helpful. I have amended the draft condition to be consistent with the draft covenant attached to that decision, which all centre on matters relating to the RMA. In doing so, I have omitted all reference to matters of damages, negligence, nuisance and interference, which are matters covered under other legislation and outside both my and the Council's jurisdiction. I have also amended the Advice Note for clarity and certainty.

93. I find that, with my amendments, these two conditions are certain and clear as to their purpose and application, and that any review of the conditions would be sufficiently guided by the Advice Notes and this decision.

94. Finally, I turn to Ms. Laurenson's draft condition requiring the closing of the vehicle entrance on Lot 2. Given the factors involved (that it is existing and visibly apparent, the extent of rural production activity occurring on the site, the covenant and the dwelling is existing), I consider that this is not necessary. I have therefore not included it.

95. I have also reviewed the consent conditions as a whole and made minor amendments for consistency and clarity of interpretation and implementation. This includes deleting condition 16, changing the first sentence to a separate decision, as below, and requiring the certificate for it as a new condition 5, associated with the creation of the new esplanade strip.

96. The final conditions are set out in Appendix A.

## 8 Decision

97. For the reasons set out in this decision, I uphold the Objection. In doing so, I reverse the Council's decision to reject SUB22-48013.

98. For the reasons set out in this decision, in accordance with Sections 104, 104B, 104D, 108 and 220 of the RMA, I hereby grant consent to the application for resource consent by Aaron Stephens to subdivide 118 Wortley Road, Lepperton, New Plymouth, legally described as Lot 1 DP 452310 (SUB22/48013), subject to the conditions set out in Appendix A.

99. As part of granting consent, pursuant to Section 234(7) of the RMA, I also grant the Application to cancel part of an instrument creating an esplanade strip endorsed on Plan (Part Section 28 Huirangi District) and registered thereon under Instrument Number 7099382.1 to the extent to which it applies to Lot 1 Deposited Plan 452310.

Gina Sweetman

**Independent Commissioner**
17 February 2025

**APPENDIX A**

**CONSENT CONDITIONS**

**General Accordance**

1. The use and development of the land must be as described within the application SUB22/48013 received by the council on 24 January 2022 and further information received on 17 September 2024 and be generally in accordance with the following plan except as amended by the conditions below:

    a. Plan entitled 'Proposed subdivision of Lot 1 DP 452310, 118 Wortley Rd, Lepperton' dated 09.12.2025 prepared by Landpro Limited reference 24283-01-C

    A Copy of the approved plan is attached.

**Section 223 Certification:**

2. The survey plan must conform with the scheme plan by Landpro Limited, Job Reference 24283, Drawing 01, Rev C, dated 09.12.2025 and all other information including further information contained within application reference number SUB22/48013.

3. Pursuant to Sections 230 and 232 of the Resource Management Act 1991 (RMA), the Land Transfer Plan must include an esplanade strip, minimum 15m wide, adjoining the true right bank of the Waiongana Stream for the purpose of providing riparian protection and recreation.

**Section 224 Certification:**

Landscaping/Riparian Planting

4. Prior to certification under Section 224 of the RMA, the consent holder must undertake the following within Lot 2:

    a. A minimum of five metres of the Waiongana Stream edge must be planted with native vegetation using "TRC Riparian Guidelines Establishing Riparian Vegetation - number 26". and

    b. A minimum of one metre of the tributary of the Waiongana Stream edge must be planted with native vegetation using "TRC Riparian Guidelines Establishing Riparian Vegetation - number 26".

Esplanade Strip

5. The consent holder shall make a request for the certificate confirming cancelation of part of an instrument creating an esplanade strip endorsed on Plan (Part Section 28 Huirangi District) and registered thereon under Instrument Number 7099382.1 to the

extent to which it applies to Lot 1 Deposited Plan 452310 prior to Section 224 of the RMA approval.

6. Prior to certification under Section 224 of the RMA, the consent holder must prepare an easement strip instrument to the satisfaction of the New Plymouth District Council's (Council) Property Lead. The easement strip instrument must include the following provisions:

    a. The following acts are prohibited on the strip:

        i. Wilfully endangering, disturbing, or annoying any lawful user of the strip (including the owner or occupier of the strip);

        ii. Wilfully damaging or interfering with any structure adjoining or on the land, including any building, fence, gate, stile, marker, bridge, or notice;

        iii. Wilfully interfering with or disturbing any livestock lawfully permitted on the strip.

        iv. The prohibitions referred to in paragraphs (i) and (iii) do not apply to the owner or occupier of the strip.

    b. The following further acts are prohibited on the strip:

        i. Lighting any fire;

        ii. Carrying any firearm;

        iii. Discharging or shooting any firearm;

        iv. Camping;

        v. Taking any animal on to, or having charge of any animal on the land;

        vi. Taking any vehicle on to, or driving or having any charge or control of any vehicle on the land (whether the vehicle is motorised or non-motorised);

        vii. Wilfully damaging or removing any plant (unless acting in accordance with the Noxious Plants Act 1978 or the Biosecurity Act 1993);

        viii. Laying any poison or setting any snare or trap (unless acting in accordance with the Agricultural Pests Destruction Act 1967 or the Biosecurity Act 1993)

        ix. The prohibitions referred to in paragraphs (v) and (vi) above do not apply to the owner or occupier of the strip who shall be entitled to graze or bring animals and vehicles on to the strip.

    c. Fencing

i. The grantee must, in order to enhance the conservation values of the strip, erect a fence in accordance with the conditions of this consent.

d. Planting

i. The grantee must, in order to enhance the conservation values of the strip, undertake riparian planting along the length of the strip in accordance with conditions of this consent.

e. Access to the Strip

i. Any person shall have the right at any time to enter upon the land over which the esplanade strip has been created and remain on that land for any period of time for the purpose of recreation, subject to any other provisions of this instrument.

Advice Note: As the grantee is required to undertake fencing of the strip and riparian planting, prohibition in (a)(ii) is extended to include the owner of the strip.

Stock Exclusion

7. Prior to certification under Section 224 of the RMA, the Waiongana Stream riparian margins must be fenced with a stock proof fence.

Services

*Power and Telecommunications*

8. If not already established individual power and telecommunications connections must be provided to, and contained within, each lot.

9. Prior to certification under Section 224 of the RMA, the consent holder must provide confirmation from the utility provider(s) that such connections exist for Lots 1 & 2.

*Wastewater*

10. Prior to certification under Section 224 of the RMA, the consent holder must confirm the location of the on-site wastewater system for the existing dwelling on Lot 1 and, if necessary, relocate or upgrade the system to ensure that it is located a minimum of 1.5m within the boundaries of Lot 1.

11. To confirm compliance with Condition 9, the following must be provided for certification by the Council's Development Engineer:

a. A plan to a scale acceptable to the Council showing the position of the on-site wastewater system including the effluent disposal field and reserve area for the dwelling located on Lot 1, which must be certified by a registered professional surveyor; and

b. Provide a current Maintenance Certificate in accordance with section 6.3.5.6 of AS/NZS 1547:2012 On-site Domestic Wastewater Management stating there is no evidence of effluent seepage across the boundaries of Lot 1 into the adjoining Lot.

OR

c. Provide evidence of a Building Consent and resulting compliance for the relocation works.

Advice note: If the effluent field is required to be relocated to comply with the above condition, the consent holder may need to obtain a building consent from the Council prior to the relocation.

*Stormwater*

12. The consent holder must provide a plan and confirmation demonstrating that existing stormwater soakage devices serving Lot 1 are contained wholly within the boundaries of Lot 1.

*Compliance with permitted activity rules*

13. Unless authorised by a land use consent, prior to Section 223 and 224 certification under the RMA, the consent holder must ensure that all buildings comply with the permitted activity rules relating to building coverage, setbacks, daylight angles relative to the new boundaries and number of dwellings, except that the dwelling on Lot 1 shall be located as demonstrated on the approved plan.

Covenants and Section 221 Consent Notices

14. Pursuant to Section 221 of the RMA, a consent notice must be registered on the Records of Title for Lots 1 and 2, as volunteered by the consent holder, advising the registered proprietors of the following requirements:

    a. Only one residential unit is permitted on each allotment; and

    b. There shall be no subdivision of lifestyle/residential lots from either Lot (where a subdivision would enable additional dwellings to be built or primary production potential be reduced).

    These consent notices remain in effect while the land is zoned rural production (or its equivalent).

    Advice Note: This condition has been volunteered by the consent holder on an Augier basis for the purpose of ensuring that activities which are incompatible with the role, function and predominant character of the Rural Production Zone (or its equivalent) are avoided and there is no further intensification of activities which would result in the loss of the productive potential of highly productive soils and versatile rural land.

This condition includes restricting the construction of any additional residential unit, sleep-out, minor residential unit and any Detached Minor Residential Unit under the National Environmental Standards for Detached Minor Residential Units 2025.

15. The consent holder must, as volunteered by the applicant, register a Covenant under Land Transfer Act 2017 on the Records of Title for Lots 1 & 2 to the burden of the land contained in Lot 1 for the benefit of the land contained in Lot 2 to the effect that the registered proprietors of Lot 1:

    a. acknowledge that their property is located in a Rural Production Zone (or its equivalent), in which a range of rural production activities occur

    b. must not lodge, bring, be party to, finance or contribute to the cost of any application, submission, enforcement action, objection, appeal or any other proceeding under the RMA (or any successive or replacement legislation) designed or intended to oppose, limit, prohibit or restrict the continuation of lawful operation of any lawful activity occurring on Lot 2. The Covenant must be prepared by the consent holder at their expense.

    Prior to certification under Section 224 of the RMA, the consent holder must provide the Council an undertaking from their solicitor that the covenant(s) will be registered at the time new Records of Title are issued for Lots 1 and 2.

    Advice Note: This condition has been volunteered by the consent holder on an Augier basis for the purpose of ensuring that rural productive activities occurring within Lot 2, which are compatible with the role, function and predominant character of the Rural Production Zone (or its equivalent) and being conducted lawfully, are enabled and protected from potentially incompatible activities occurring on Lot 1.

16. The consent holder must, as volunteered by the applicant, register the Covenant that has been agreed between the consent holder and Tegel Foods Limited under the Land Transfer Act 2017 on the Records of Title for Lots 1 & 2 being to the effect of preventing specific activities and requiring consent from Tegel Foods Limited for other specified activities.

    Prior to certification under Section 224 of the RMA, the consent holder must provide the Council an undertaking from their solicitor that the covenant(s) will be registered at the time new Records of Title are issued for Lots 1 and 2.

    Advice Note: This condition has been volunteered by the consent holder on an Augier basis to reflect an agreement reached between the consent holder and Tegel Foods Limited. This covenant protects established intensive indoor primary production operating at the Tegel Foods Limited site.

*ADVICE NOTE*

*Consent Lapse Date*

1. *This consent lapses 5 years from commencement of this consent unless: the consent is given effect to before that date; or unless an application under section 125 of the Resource Management Act 1991 is made and granted by Council before the expiry of that date for an extension of time for establishment of the use.*