Before New Plymouth District Council

Independent Commissioner Mark St Clair

IN THE MATTER of an application for resource consents LUC24/48662 and SUB24/50201 1 and 9 Washer Road, Omata

Washer Family Trust Limited
Applicant

1 October 2025

SUBMISSIONS ON BEHALF OF WASHER FAMILY TRUST

1. Introduction and opening statement

1.1 The Washer Family Trust seeks resource consent from New Plymouth District Council to adjust a property boundary between Lot 20 and Lot 31 at Tapuae Country Estate, a high-end lifestyle farm-park subdivision, in Omata.[1]

1.2 The application corrects a surveying oversight and facilitates a safe residential dwelling building platform at Lot 20.

1.3 The estate is managed by Tapuae Country Estate Limited. The company — as leaseholder of the balance lots — is the "owner" of the land under the RMA's definition of "owner".[2] It consents to the application.

1.4 Granting the orthodox application will not:

(a) Diminish the total area of the farm balance lot (lot 31) at Tapuae Country Estate;[3]

(b) Alter the manner or scale of the balance lot's farm continued operation;[4]

[1] Expert Planning Statement of Christopher Rendall, 17 September 2025 ("**CR**") at [24].
[2] Resource Management Act 1991, s 2: The definition of "owner" includes: "any person who has agreed in writing … to purchase … any leasehold estate or interests in the land, or to take a lease of the land".
[3] Statement of John Washer, Farmer, 17 September 2025 ("**JW**") at [16].
[4] JW at [17]; CR at [21].

(c) Alter amenity values or the nature and character of the Tapuae Country Estate farm park;[5] or

(d) Alter lot owners' ability to use the balance lot farmland.[6]

1.5 At present, development of Lot 20 is not economically viable. This is contrary to the RMA's purpose,[7] undermines the consent's original purpose and inefficiently uses the land's resources.

1.6 The consent authority cannot, as a matter of law consider submitters' private property right concerns when determining a resource consent application. To do so would be a clear and significant error of law.

2. Description of the proposal

2.1 The Applicant proposes to move Lot 20's presently consented building platform ("**site 1**"), 50 metres to the east ("**site 2**"). Lot 20 was consented as a site for a high-end residential dwelling, however, natural land instability at Lot 20 was not detected during the initial subdivision.[8]

2.2 The adjustment exchanges 1,507m² from Lot 20 into Lot 31.[9] This is in exchange for 1,506m² from Lot 31 into Lot 20.[10] In other words, there is effectively equality of exchange.

2.3 A land-use consent applying to all estate lots, including Lot 20, confirming a 5m setback has been in place since 2014.[11] For completeness the application seeks a land use consent to confirm a 5m setback from the proposed revised boundary line.

2.4 The Estate spans 77.0625 hectares and contains 30 high-amenity residential lots. These lots surround a section of land known as the

[5] CR at [17(f)], [46], and [47].
[6] JW at [5]. Lot owners have consented to Lot 31being leased, as farmland, until the year 2108. See Appendix to JW ("**A**"), at A-196, 197. Cl., 1.1, 1.2. The land each lot owner holds a 1/30th undivided share in as a tenant in common, has been leased, and will be leased as farmland until 2108. The current farm sublessee has exclusive possession and quiet enjoyment of the balance lot (ref JW and sublease and head lease). Lot owners cannot lawfully access the areas subject to this application (ref to JW affidavit and lot owners covenants).
[7] Resource Management Act 1991, s 5(2).
[8] Expert Geotechnical Statement of Kristel Franklin, 17 September 2025 ("**KF**") at [25(a)], [29].
[9] Resource Consent Application to New Plymouth District Council — prepared for Washer Family Trust, Christopher Rendall, Land Pro Limited, 26 July 2024 ("**lodgement package**") at [1.1] and page 55.
[10] As above.
[11] CR at page 26.

"balance lots" (lot 31 and 32). Lot 31 is the balance lot relevant to the application. It has an area of 56.05 hectares.[12] The Estate was created this way to prevent additional subdivision occurring in excess of the original number of 30 homes, to ensure the working farm's continued existence,[13] and to preserve amenity.

2.5 Lot arrangements were chosen to optimize the balance lot's ability to support a working farm.[14] While the company's constitution records the Estate should contain 30 homes.[15] The natural land instability at site 1 prevents Lot 20, the final lot, from being developed — and fulfilling the subdivisions' initially consented plan.[16]

2.6 John and Mary Washer created the Estate. When the Washers initially owned all Tapuae land, they leased the balance lots to the company under a head lease,[17] to ensure lot 31 remained a farm for as long as possible. The head lease runs until 2058, with a 50 year right of renewal until 2108.[18]

2.7 Each estate lot was established with an ownership interests as to a 1/30th undivided share (as a tenant in common) of the leased and farmed balance lots. All lot owners were on notice of the pre-existing lease arrangements prior to purchasing their lots.[19] It is a feature of the titles that they purchased. Before purchasing an estate lot, and becoming a shareholder in the company, prospective owners receive the estate's "**big black book**" — a collation of all the estate's key legal documents[20] — including the company's constitution, head-lease, sub-lease and land covenants.[21]

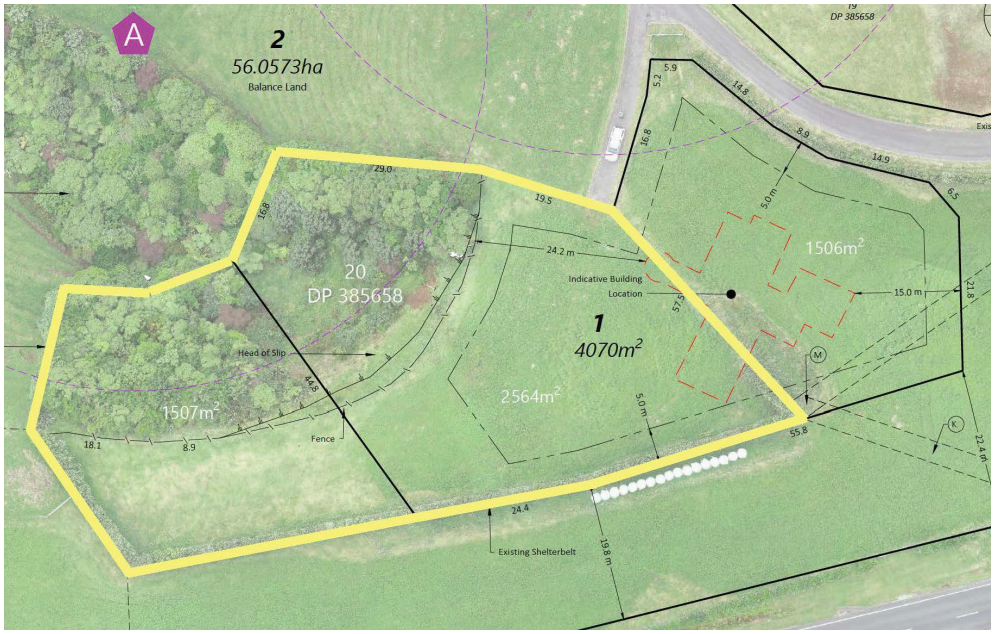
2.8 Washer & Co Limited, the Washer's farming company, currently operates a dry stock bull farm on Lot 31 with 100 dry stock cattle.[22]

[12] CR at page 25.
[13] JW at [5], A-196, 197. Cl., 1.1, 1.2.
[14] Lodgment package at page 13: "the [subdivision's] original intention was to create lots with small setback to maximize the shared are that exists between the lots. This maximizes the use of the Highly Productive Land... **Larger lots created primarily to achieve permitted [15 m] setbacks would be a perverse outcome**."
[15] JW, A-179, cl 2.1.
[16] KF at [25].
[17] JW at [4].
[18] JW at [5], A-196, 197. Cl., 1.1, 1.2.
[19] JW at [6].
[20] JW at [6].
[21] JW, A 001-392.
[22] JW at [11].

2.9 While each submitter owns a 1/30th share of the balance lot, this only amounts to a 1/30th share of the "reversion"[23] under the head lease. The lot owners remain bound by the terms of the lease, and they remain subject to its enforcement, as if they were the initial lessor.[24] The fee simple freehold land does not revert to the landlord until the lease comes to an end in 2108, over eighty years from now.[25]

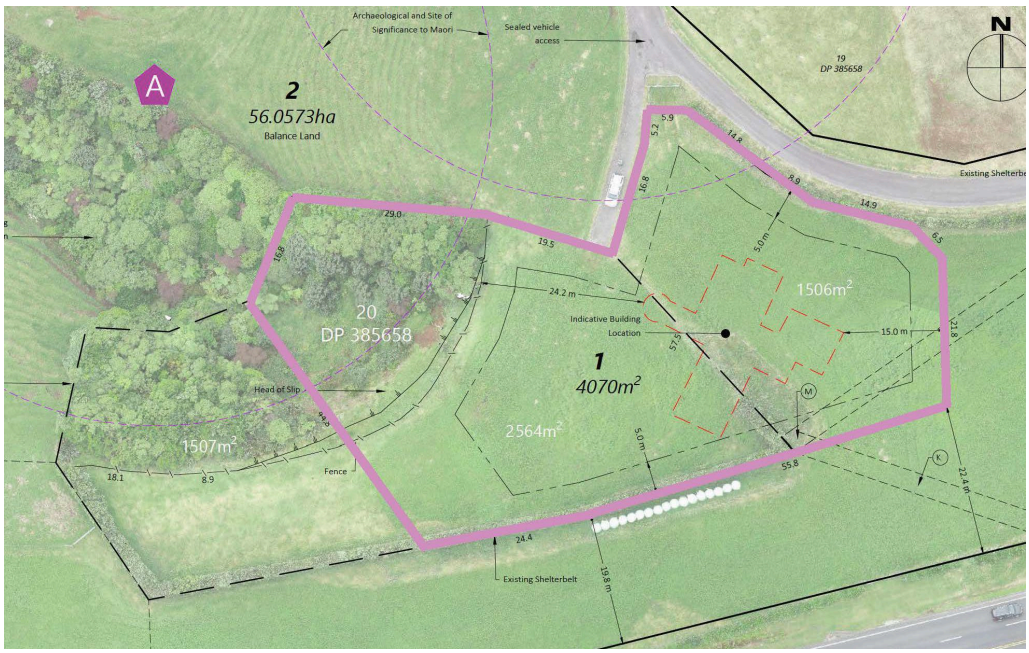
2.10 The proposal will have a less than minor outlook and rural amenity effect on all persons associated with dwellings other than lot 20.[26]

2.11 Lot 20's current boundary is outlined in yellow below:

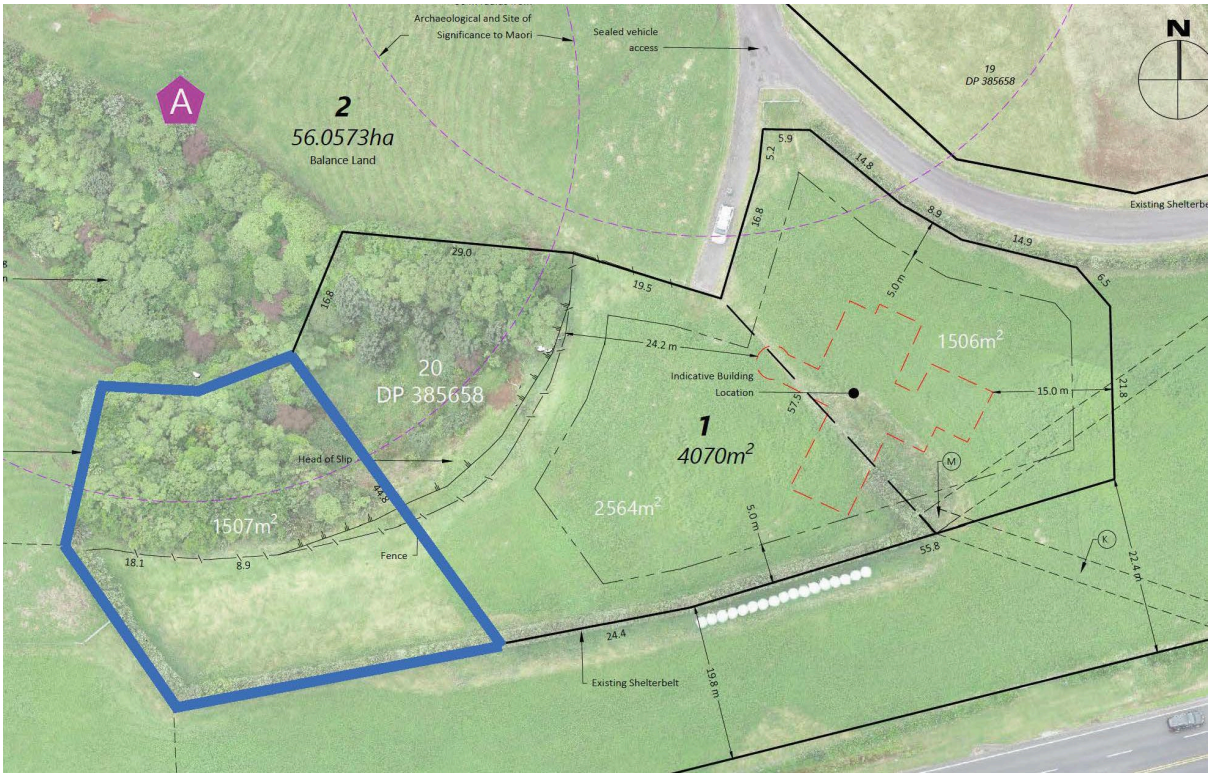


2.12 The proposal will change Lot 20's boundary to reflect the purple outline below:

[23] A reversion arises whenever the owner of an estate grants a particular estate, but does not dispose of the whole of their interest. So — a reversion is defined as "such part of a grantor's interest as is not disposed of by his grant" (Megarry and Wade (8th ed) at [9.008]).
[24] Property Law Act 2007, s 231. *Gibbons Holdings Limited v Wholesale Distributors Limited* [2008] 1 NZLR 277 (SC) at [10], per Blanchard J, referring to longstanding principle articulated by the House of Lords in *City of London Corporation v Fell* [1994] 1 AC 458 at 604. Here, the company's lease is a grant of an estate in land — creating privity of estate between it and the lessor..
[25] *Patel v Digital Printing Group Ltd* (2008) 10 NZCPR 30 (HC) at [26], per Heath J.
[26] Campbell Robinson, *Hearings report under s 42A of the RMA for subdivision and land use consent applications Section 42A*, 10 September 2025 ("**s 42A report**" or "**planner's report**") at [53], CR at [45].



2.13 The area below, bounded in blue, will become part of lot 31, the balance lot:



2.14 A majority of lot owners support the application — as does the company.[27] The owners of 20 lots have provided APA's.[28] The consent authority cannot

[27] Lodgment package, at page 7.
[28] See annotated map at CR, page 25 — detailing the 20 lots supporting the application, 8 in opposition and 2 declining to engage with the application at all.

consider "any effect on a person who has given approval to the application".[29]

2.15 Only eight owners oppose the application.[30] Most opposing owners' lots are located on the opposite side of the estate to Lot 20, with the closest lot 400m away from Site 2.[31]

3. Assessment of proposal's environmental effects

3.1 The application reduces risk of further gully slippage and allows native vegetation in the gully to continue recovering — consistent with the Estate's original subdivision consent conditions, requiring the preserving, protecting and replanting vegetation.[32]

3.2 Moving the building platform closer to Lot 19 (uphill of Lot 20) reduces Lot 20's visual impact on Lot 19. As noted above at [2.5]— Lot 20's shape strongly influences the planned 5m setback. All sections are designed to maximise the Farm's use of the balance lot. However, because Lot 19's owner has provided APA — any effect on this owner cannot be considered.[33]

3.3 A tree shelterbelt currently screens Lot 20 — this will be altered along the new boundary, to screen the site 2 dwelling.

4. Framework for consideration of application

4.1 Under the RMA, the boundary adjustment is a controlled activity,[34] and the setback approval is a restricted discretionary activity.[35] To obtain the necessary resource consents, the proposal must be evaluated against s104's list of relevant considerations. The section provides a code

[29] Resource Management Act 1991, s 104(3)(a)(ii).
[30] CR at page 26.
[31] CR at [17(i)(i)].
[32] CR at [60].
[33] Resource Management Act 1991, s 104(3)(a)(ii): the consent authority cannot consider "any effect on a person who has given approval to the application".
[34] New Plymouth Part Operative District Plan, 29 August 2025. Part 2, District-wide matters — Subdivision, Rule 1 (SUB-R1): "Boundary Adjustment Activity status: Con".
[35] New Plymouth Part Operative District Plan, 29 August 2025. Part 3, Areas specific matters — Rural Production Zone \ (RPROZ-R3). Further, "Restricted" in relation to discretionary activities means that the council has restricted its discretion to grant or withhold consent or to impose conditions to particular aspects of the activity or types of effects, and its power to grant or decline consent is restricted to those matters: RMA, s 87A(3)(a).

regulating all resource consent applications — regardless of their activity status.[36]

4.2 There are four key considerations arising under ss104(1)(a), (b), (c) and 104(3)(i)(ii). They will be reviewed in turn.

First consideration under s 104 — any actual or potential effects on the environment (s104(1)(a))

4.3 While the submitters each own an undivided 1/30th share as tenants in common of land that is leased as farmland until 2108, they are not "affected" persons under the RMA. As recently emphasised by the Court of Appeal, a person is only an "affected" person if the consent authority considers the activity's adverse effects on the person are minor or more than minor.[37] The effects are on the person; they include effects on the person's property, but not the person's property rights.[38] The proposed activities' adverse effects on the submitters are less than minor.[39] "Effect" in the RMA means **effects on the environment**,[40] not private property interests.[41]

4.4 Property rights arise under the general law or under statutes other than the RMA.[42] Section 221 reflects this: a resource consent is not real or personal property.[43]

4.5 "Effect" is concerned directly with the natural and physical resources and the environment in which they exist[44] — ill-founded perceptions do not fall

[36] *Royal Forest and Bird Protection Society of New Zealand Incorporated v New Zealand Transport Agency* [2024] NZSC 26 at [18]. *Springs Promotion Ltd v Springs Stadium Residents Assn Inc* [2006] NZRMA 101 (HC) at [61].
[37] *Lysaght v Whakatāne District Council* [2022] NZCA 423 at [51].
[38] At [51]. Resource Management Act 1991, s 95E(1). *Lysaght*, at [52]: "it is not possible to ground in the statutory scheme [of the RMA] an argument that a person should be regarded as an "affected person" for the purposes of s 95E because an application for resource consent might have an impact on that person's property rights as opposed to the property itself. The RMA is concerned with the latter, not the former."
[39] Section 95E(1).
[40] Section 3(1). *Dye v Auckland Regional Council* [2002] 1 NZLR 337 at [38]; *Queenstown Lakes District Council v Hawthorn Estate Ltd* [2006] NZRMA 424 (CA) at [57]; and *Golden Bay Marine Farmers v Tasman District Council.* [2003] ELHNZ 108 at [194]; *Lysaght v Whakatāne District Council* [2022] NZCA 423 at [47].
[41] As above.
[42] *Lysaght*, above n 40, at [49].
[43] *Lysaght,* above n 40, at [49]. Resource Management Act 1991, s 122(1)
[44] As above.

within the RMA's definition of effect.[45] Discomfort alone does not amount to an adverse effect on amenity values under the RMA.[46] Otherwise:[47] "any proposal would be vulnerable to the discomforts of its opponents no matter how irrational or ill-founded those discomforts might be." Resource management planning must be based on "realistic" scenarios.[48]

4.6 Evidence that submitters would feel discomfort, depression and sadness at the thought of a particular activity occurring in their neighbourhood does not constitute an adverse "effect" which a consent authority may consider in determining this application.[49]

4.7 The application does not engage any environmental effects that can be considered under the RMA. The case relied on by submitters, *D-G of Conservation v Marlborough,*[50] supports this proposition.

4.8 It would be "untenable" for a consent authority to step in and abrogate the Applicant's legally feasible options to administer the consent.[51] While this application is not an energy project, the point in *D-G of Conservation v Marlborough* is that obtaining property rights after the grant of consent is an entirely permissible, if not anticipated scenario.[52] Here the Applicant may do so through owner consent (which can still be given and will be sought) or, failing that, by applying for orders under the Property Law Act 2007, s 339.

Second consideration under s 104 — the relevant provisions of any statutory instrument (NES, District Plan or Part Operative District Plan) (s104(1)(b))

4.9 The application complies with all resource management expectations in the New Plymouth Operative District Plan ("**PODP**")'s rules:[53]

(a) **Amenity and Character**: The application does not introduce new lots or increase density (SUB-P15). The Estate's existing rural-

[45] *Living in Hope Inc v Tasman DC* [2011] NZEnvC 157 at [1], [124] and [211]. Approved in *SKP Incorporated v Auckland Council* [2018] NZEnvC 81 at [249].
[46] At [124] and [211].
[47] At [124].
[48] *Creswick Valley Residents' Association Incorporated v Wellington City Council* [2015] ELHNZ 204 at [2-30].
[49] *SKP Incorporated v Auckland Council* [2018] NZEnvC 81 at [249].
[50] *Director-General of Conservation v Marlborough District Council* [2010] NZEnvC 403.
[51] At [41].
[52] At [39].
[53] CR at [17(b)].

residential character is maintained (RPROZ-04). No adverse light, noise, or traffic effects arise from the proposal (RPROZ-P5).

(b) **Setback**: The proposed 5m setback is appropriately controlled to maintain the rural production zone's character (RPROZ-P4).[54]

(c) **Infrastructure**: Existing onsite systems are already provided for (SUB-P5). No additional demand is created (SUB-P4). There will be no additional demand on the road network; access arrangements remain unchanged.

(d) **Hazard Management**: The adjustment directly responds to geotechnical instability by relocating the building platform to a more stable location, thereby avoiding risk to people and property (SUB-P3(1) and (2)). Considering the relevant instrument (the PODP)'s provisions — adverse effects on the environment are less than minor and, in fact, mitigated through better hazard management.

Third consideration under s 104 — any other matter the consent authority considers relevant and reasonably necessary to determine the application (s104(1)(c))

4.10 The application facilitates sustainable management of the land for residential purposes while safeguarding people and property from natural hazard risks.[55] The application enables Lot 20's owner to provide for their social and economic wellbeing[56] through enabling: the efficient development of their land for their family needs, their ability to participate in the estate community, and provide for economic well-being if they were to sell Lot 20.

4.11 The wider context to the submitters' opposition demonstrates their concern is unrelated to resource management considerations. Opposing submitters have attempted to leverage their consent to extract collateral benefits from the Washers.[57] This is poor behaviour.

[54] The pre-existing 5m setback consent for Lot 20 reflects this. CR at page 26, Resource Consent LUC13/46103.
[55] Sections 5(2), 7(b).
[56] Section 5(2) "In [the RMA], sustainable management means managing the … development … of natural and physical resources in a way … which enables people … to provide for their … economic … well-being".
[57] JW at [20]. The consent authority cannot impose a condition on the resource consent that would nullify the consent's grant: *Genesis Power Limited v Manawatu-Wanganui Regional*

4.12 Opposing submitters also tie their opposition to the company requiring lot owners to adhere to the constitution's terms regarding their financial conduct when participating in transactions on behalf of the company; and certain residents' encroachments on the balance lot.

4.13 Submitters' recent correspondence demonstrates their concerns are not premised on environmental effects and provides the context necessary to see the opposition for what it really is.

4.14 Stephen Frowde of Lot 27 wrote:[58]

> I am also concerned that the current Directors of the estate will commercially gain from this transaction without any commercial benefit being offered to the shareholders

4.15 Brenda Moore of Lot 27 wrote:[59]

> [T]he current disputes and other unresolved matters need to be sorted before we can move forward with … the boundary change.

4.16 Richard and Lorette Raynor of Lot 7, regarding "the ongoing pursuance of issues against other residents" wrote:[60]

> For us to provide our approval you need to take responsibility for historical approvals given by you and for you and the current Board to acknowledge in writing that you are not in dispute with any shareholder of Tapuae Estate.

4.17 Brent and Maree Schumacher of Lot 14 wrote:[61]

> we would gladly reconsider our signing of the required consent forms … for this to eventuate, we will require written confirmation from you and the current board that the issues being pursued with residents are once and for all settled.

4.18 Robyn Marshall and Phillip Pryde of Lot 3 wrote:[62]

> [W]e … will not begin to consider your proposal until all current disputes, allegations and remonstrations … are settled. We too also wish to see in writing that all past issues are resolved or 'grandfathered'.
>
> Once these matters are settled, we … are happy to look at negotiations re your proposed boundary adjustment. … [I]t's important to note, you are engaging with us all (shareholders) as the developer of Tapuae. As such there is the prospect of financial gain

Council [2006] NZRMA 536 at [79], referring to *Lyttelton Port Company Limited v Canterbury Regional Council* (Environment Court, Christchurch C 8/01, 26 January 2001, Judge Smith).
[58] JW, A-411. Email from Stephen Frowde to Campbell Robinson, NPDC consultant, dated 12 February 2025 – later provided by NPDC to the applicant.
[59] JW, A-397 and 398. Email cc'ing John Washer, from brendafmoore@gmail.com: 13 February 2025.
[60] JW, A-398. Email dated: 12 February 2025.
[61] JW, A-399. Email to John Washer, from brent.schumacher@starstvl.co.nz, dated: 11 February 2025.
[62] JW, A-400. Email to John Washer, from ppryde@footlose.co.nz, dated: 11 February 2025.

> and or reward (for you), this makes … any boundary adjustment a commercial consideration, … as such its [sic] appropriate for the matter to be negotiated around commercial terms that best suit … all of us …

4.19 Patrick Cameron and Randy Buckley of Lot 26 wrote:[63]

> [F]or us to give any consideration to your proposal, the first and most essential step is for you—along with Jason and Fiona—to settle all outstanding issues, particularly in respect of us and the Seeds.[64]
>
> Once these matters have been fully and finally resolved, we can then move to what is ultimately a commercial negotiation regarding Section 9 [Lot 20].

4.20 Barbara Cameron and Deborah Williams of Lot 29 wrote:[65]

> [T]he matter is firstly a commercial matter (pre any council approach for approval) as one party wishes to create opportunity to prosper at the expense of the other party … commercial negotiation between parties will likely create a platform for fair and palatable outcome for all.

Fourth consideration under s 104 — NPDC must disregard the effects on any person who has given written approval to the application (s104(3)(a)(ii))

4.21 When conducting its s104 analysis, the consent authority must ignore effects on persons who have given written approval. The owners closest to Lot 20 have provided APA consent forms supporting the application.[66]

4.22 Self-evidently, if any amenity affects were to arise from the application, these lot owners would be the most likely affected. However, in correspondence, these owners state:

> Our property is the closest lot to Lot [20] … WE fully support the proposed relocation of Lot [20] as proposed by the developer Washer as it will have NO financial, physical, or environmental on our property…

4.23 This submission supports the proposition that owners of lots located on the other side of the estate cannot be impacted, if the nearest lot is not.

[63] JW, A-402. Email to John Washer, from randybuckley@proton.me, dated: 10 February 2025.
[64] This is a reference to Lot 13's owners Jimmy and Denise Seed.
[65] JW, A-409 and 410. Email to Campbell Robinson (NPDC planning consultant) from Barbara Cameron and Deborah Williams, Dated 13 February 2025. Email later provided to applicant by NPDC as part of application process.
[66] CR, at page 25.

5. The relevance of Part 2 of the Resource Management Act

5.1 Section 104 considerations are subject to Part 2 of the RMA. They are also subject to the overarching purpose of promoting natural and physical resources' sustainable management.[67]

5.2 Here, recourse to Part 2 is unnecessary, accounting for the PODP's recency — having come into effect in August 2025.[68] The PODP is not invalid, incomplete or uncertain. Applying an overall broad judgment approach is contrary to now orthodox legal principle under the RMA, and Part 2 cannot be applied as a collateral means to decline this application.[69]

5.3 The planner accepted the PODP's provision had been "robustly prepared in accordance with [Part 2]" but then determined the PODP's "provisions are less helpful when considering a subdivision application where not all landowners are willing participants".[70] He considered this required recourse to Part 2, particularly s7(c), which states:[71]

> all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall have particular regard to … the maintenance and enhancement of amenity values

5.4 Practically, the reason the POPD does not address applications with this particular private property right element, is because the PODP was prepared in accordance with the RMA. As is orthodox legal principle, the RMA does not address private property rights.

5.5 Part 2 of the RMA does not need to be referred to unless the district plan is invalid, incomplete, or uncertain. The Court of Appeal has stated that when a plan has been competently prepared under the RMA, it can be assumed to give effect to Part 2, and there is no need to refer back to Part 2 unless there is doubt about the plan's adequacy.[72]

[67] Resource Management Act 1991, s 5.
[68] Planner's report at [20].
[69] *Royal Forest and Bird Protection Society of New Zealand v New Zealand Transport Agency* [2024] 1 NZLR 241 (SC) at [80].
[70] Planner's report at [86].
[71] Resource Management Act 1991, s 7(c).
[72] *R J Davidson Family Trust v Marlborough District Council* [2018] 3 NZLR 283 (CA) at [74].

5.6 Appellate guidance highlights instances where allowing Part 2 to influence a s104 assessment's overall outcome is inappropriate.[73] This includes where doing so would:

(a) subvert a clearly relevant restrictions in the material plan;

(b) render a plan ineffective; or

(c) produce an outcome contrary to the thrust of a coherent set of policies that were prepared having appropriate regard to Part 2.[74]

5.7 Further — when a district plan has been prepared in accordance with Part 2, as the POPD has, it is inconsistent with the RMA's scheme for the consent authority to allow the district plan to be "undermined"[75] or "rendered ineffective" by general recourse to Part 2 in deciding [this] resource consent application".[76]

6. Further discussion of legal issues

6.1 The planner's report and opposing submissions raise a number of legal issues, all of which are addressed below.

6.2 The planner's report contains both legal and factual errors:

(a) Legally incorrect interpretation of "amenity" under RMA.

(b) Unpermitted and unlawful consideration of property rights when assessing resource consent application.

(c) Factually incorrect determination that application will affect estate's amenity.

(d) Taking issue with absence of alternatives, when the statutory requirement to provide alternatives has not been not triggered.

6.3 The submitters say:

(a) Allowing the application will override their private property interest — in favour of fulfilling the Washers' development plans; and

[73] At [73] – [75].
[74] At [74].
[75] *Royal Forest and Bird Protection Society of New Zealand v New Zealand Transport Agency* [2024] 1 NZLR 241 (SC) at [109].
[76] *R J Davidson*, above n 72, at [82].

(b) The boundary adjustment and exchange of land burdens the balance lot with a natural hazard — constituting grounds to decline the application.

6.4 The simple response to these is that:

(a) The RMA permits development and is not a "no-effects" statute; and

(b) The application actually protects the balance lot from the effects of a natural hazard.

Reporting planner makes material legal and factual errors in section 104(1)(a) "amenity values" analysis

6.5 The planner's primary basis for his recommendation is the alleged perceived impact on the submitters' "amenity". The planner's analysis is legally and factually deficient. It does not articulate a valid basis on which an application could be lawfully declined.

Summary of planners' analysis

6.6 The material portions of the planner's amenity analysis are noted below:

(a) As to the consent's impact on submitters, the planner states:

> "[w]hilst the submissions do not raise typical concerns regarding common subdivision matters … **they consistently raise an important issue being the ability to use and appreciate land over which they have a shared legal right**". [77] (emphasis added).

And:

> "Section 3 [of the RMA] provides broad discretion to consider the effects of this proposal. … considering the discretion available under [s 104B], I am satisfied … the matters … can be considered under s 104(1)(a)."

(b) The planner further states: "I consider … the concerns raised by those in opposition are … 'amenity values'".[78]

(c) The planner (in the next sentence) accepts that the submissions do not raise effects on the environment (as s104(1)(a) requires).[79] But, then says:

[77] Planner's report at [48].
[78] At [59], citing Resource Management Act 1991, s 2.
[79] At [60].

> "they [the submitters] describe effects which reflect their personal appreciation and expected physical use of the land".[80]

(d) The planner then records his core error by stating:[81]

> "I agree with the submitters concerns that **the proposal would, at face value impact on their ability to use the land which they have legal rights over for its common and agreed purpose**. Should the boundary adjustment be conformed [sic], land which they can currently access and gain utility from would be privately owned." (emphasis added).

(e) The planner applies this finding to "the planned character of the underlying zone in which the subdivision takes place",[82] before concluding:[83]

> "[i]n regard to amenity values … unmitigated the level of effects would be significant and that the proposal would permanently impact on the submitter's appreciation if [sic] the land. Once established, the effects could not be easily undone as the new boundaries would not be easily reversible." Further, "the significant adverse effects on the submitters [sic] share of the common property would be significant and are not and [sic], remedied or mitigated".[84]

Planner's incorrect characterisation of amenity values

6.7 The submitters' "personal appreciation and expected physical use of the land" are not "amenity values" under the RMA. The opposing submissions address property rights,[85] and do not mention amenity values.

6.8 Amenity values under the RMA can encompass protection of the character of a residential area — including the personal appreciation of residential quality and the enjoyment of privacy.[86] However, amenity values are assessed objectively, and subjective views are not determinative.[87] Determination of the amenity values at the estate cannot occur solely on submitters' subjective assertions.

[80] At [60].
[81] At [62].
[82] At [63].
[83] At [64].
[84] At [67].
[85] Planner's report at [64]; JW at [21]; CR at [39]–[40], [66].
[86] Resource Management Act 1991, s 2(1) definition of "amenity values". *Lee v Auckland City Council* [1995] NZRMA 241 (infill dwelling density issue) and *Chan v Auckland City Council* [1995] NZRMA 263. See also *Zdrahal v Wellington City Council* [1995] 1 NZLR 700; [1995] NZRMA 289.
[87] *SKP v Auckland Council* [2018] NZEnvC at [205] agreeing with the environment court in *Schofield v Auckland Council* [2012] NZEnvC 68 at [51].

6.9 "Character" is associated with the concept of amenity values.[88] For example, a proposal changing the character of an area from rural to industrial has been held to impact amenity.[89] The approach to the definition of amenity in s2 emphasises the "intrinsic" or "present neighbourhood character" in assessing amenity values.[90]

6.10 The planner properly observes that granting the application will continue to maintain the estate's rural character, and any effects on character will be acceptable.[91] Reverse sensitivity effects are also acceptable. These findings are an orthodox basis to conclude the application will not affect amenity.

Consent authority cannot consider property rights when determining resource consent application

6.11 Adverse effects on opposing submitters' share of common property, as construed by the planner, are not amenity values — they are property rights and cannot be considered in this forum.[92]

6.12 Section 104 does not address the general lawfulness of a proposed activity.[93] It is trite law that "[d]isputes about private property rights are … generally not considered in determining resource consent applications."[94] Environmental effects of a proposed activity are within a consent authorities' remit for consideration — determinations of private property rights are not.[95]

6.13 Resource consent holders (and applicants) do not generally have to be an owner of any land to which the consent applies.[96] Section 88 of the RMA (making an application) provides that 'a person' may make a resource consent application. "A person" has been interpreted expansively and

[88] *BP Oil NZ Ltd v Manukau City Council* [1998] ELHNZ 457 (EnvC).
[89] *Guardians of North Taieri Inc v Dunedin City Council* (2004) 10 ELRNZ 286 at [111].
[90] *Shell Oil NZ Ltd v Auckland City Council* [1994] ELHNZ 17 (PT): "This environment is essentially residential/commercial in its character with a strong emphasis on the maintenance of pedestrian amenity. … a service station use on this particular site will not maintain nor enhance those amenity values".
[91] Planner's report at [54]
[92] CR at [17(d)], [72].
[93] *Action for Environment v Wellington City Council* [2012] NZHC 1687 at [24].
[94] *Director-General of Conservation v Marlborough District Council* [2010] NZEnvC 403 at [32].
[95] The Court of Appeal recognises consent authorities are concerned with the effects of proposed activities, not the nature of the applicant's legal rights or interests in the particular land (*MacLaurin v Hexton Holdings Ltd* [2008] NZCA 570 at [47]). The Environment Court has held to the same effect: *Auckland Volcanic Cones Society Inc v Transit NZ Ltd* [2003] NZRMA 54 (EnvC) at [51].
[96] *Hampton v Hampton* [2010] NZRMA (EnvC) 412 at [15].

generally is understood to mean "any" person.[97] Applying orthodox legal principle, the consent authority cannot consider the impact of the consent's grant on the submitter's undivided 1/30th share in the balance lots' reversion.

6.14 The company[98] may validly make an application for resource consent, and can, and does support the same thing.[99] The "8 Freehold Residents" are concerned their undivided 1/30th interest in the leased balance lot is being negatively impacted by the boundary change. Even if the boundary change somehow impacted their reversionary interests (contested), concerns about the effect of a resource consent application on private property rights have no place in a consent authority hearing.

Planner's factual error: even if this property right concerns were valid RMA amenity interests — the application will not impact Tapuae Estate's character and its amenity will be preserved

6.15 The application does not impact on the lot owners' ability to use or appreciate the land in question.

6.16 Lot 32 is subject to a 50 year lease, with a 50 year right of renewal, held by the company. Lot 32 is held for the purpose of operating a working commercial farm. It provides amenity to the farm park by operating this way.[100] Washer & Co, have operated a dry stock bull farm on the balance lot since the estate's inception in 2008, and have a lease to operate the farm there until 2030.[101]

6.17 The submitters cannot access the portions of the balance lot that comprise the farm.[102] Lot owners have covenanted not to do so.[103]

6.18 For the health and wellbeing of all lot owners, the farm's operator restricts access to the farm, in line with their obligations under the Health and

[97] *Hampton v Hampton* [2010] NZRMA (EnvC) 412 at [14]. Resource Management Act 1991, s 88(1). *Currie v Palmerston North City Council* [2022] NZHC 2909 at [46], citing *Re Congreve* EnvC Christchurch C29/06, 16 March 2006, at [42].
[98] As the lessor of the balance lot (to Washer & Co under the sublease), and the lessee of the balance lot (under the head lease).
[99] Resource Management Act 1991, s 5 — definition of owner.
[100] AW at [11].
[101] JW at [8], A-376, Cl., 1.1-1.2.
[102] JW at [15], A-174, Cl., 2.5; A-177, Cl., 8.1, 8.3; and A-178, Cl. 13.1)
[103] JW at [14], A-188, Cl., 25.1.

Safety at Work Act 2015,[104] the terms of its sublease,[105] its own internal health and safety and risk management policies.[106]

6.19 The farm operator, Washer & Co, under the terms of its sublease is entitled to quiet enjoyment of the land it has leased.[107] This is an undertaking against interruption in the possession of the property leased.[108]

6.20 Lot owners **are unable** to presently access the portion of lot 32 that will become part of lot 19. Lot owners **will be unable** to access the "new" portion of lot 32, that has been absorbed from lot 19, after the application is granted.

6.21 All lot owners accepted restrictions like this when they purchased their units. When they did this they explicitly covenanted to these terms.

6.22 The farm operator's evidence states: "[t]he nature and character of the farm and subdivision will not be altered in any way. It will remain a farm park", and after the application is granted, "Washer & Co will continue to farm the same number of cattle in exactly the same way as it presently does".[109]

6.23 Expert geotechnical evidence demonstrates that granting the application, from a geotechnical perspective, will not constrain the ability of the farm to function as it currently does.[110]

6.24 The constitution contains design guidelines and rules to ensure the estate remains a high-end subdivision.[111] A building platform had been consented on Lot 20, a home complying with the Design Guidelines was to be built there. Under the proposal, the same sort of high end home that we see already built in the Estate, and complying with the Estate's design guidelines, will be eventually be built at site 2.

[104] JW at [9], A-390, 391, Cl., 36.
[105] JW, A-390, 391, Cl., 36.
[106] JW, A 393-395.
[107] JW, A-390 at [23.1]
[108] *Southwark London Borough Council v Mills* [2001] 1 AC (HL) 1 at 10.
[109] JW at [23] and [22].
[110] KF at [44].
[111] JW at [3].

The RMA is not a "no effects" statute notwithstanding the presence of effects it may still permit development

6.25 Concerns from opposing submitters cannot function as a total bar to re-implementing a resource consent that each submitter had implicitly accepted when they bought into Tapuae. Consents can be granted even if they will have some effects (and in some cases, more than minor effects).[112]

6.26 The "RMA does not rest on a no risk philosophy, or have the elimination of all risk as its purpose" — "all RMA decision-making rests on the Act's purpose — contained in s5".[113] A critical element of s5, is the applicant's ability to provide for their social and economic wellbeing by developing Lot 20. Development, which the RMA permits.[114]

No requirement for applicant to provide alternatives

6.27 The RMA provides "very precise"[115] triggers for when a consent authority can appropriately consider ***descriptions*** of alternatives. The application does not contain such a trigger.[116]

6.28 Where it is likely the proposed activity will result in "*any significant adverse effect on the environment*",[117] the consent authority can only seek from the applicant "a ***description*** of any possible alternative".[118]

6.29 Notwithstanding the applicable law, the absence of alternatives to the proposal was considered in the planner's assessment of positive effects states:[119]

> [w]hilst I have no reason not to accept the findings of engineering reports [sic], the applicant hasn't provided any further information as to what other options could be explored to build on Lot 20 without the for [sic] either land use or subdivision consent.

[112] *Royal Forest and Bird Protection Society of New Zealand Inc v Buller District Council (No 2)* — [2013] NZRMA 293 (HC) at [52], citing RMA, ss 17(4), 319(2) and (3).
[113] *Creswick Valley Residents' Association Incorporated v Wellington City Council* [2015] ELHNZ 204 at [2-32].
[114] *Royal Forest and Bird Protection Society of New Zealand Inc v Buller District Council (No 2)*, above n 112, at [53], referring to Resource Management Act 1991, ss 5(2), 6, 17 and 319.
[115] *Meridian Energy Ltd v Central Otago District Council* [2011] 1 NZLR 482 (HC) at [79].
[116] At [65], RMA, s 104(1)(c).
[117] *Meridian Energy*, above n 115 at [78]. RMA, s 104(1)(c), cl 1(b) of sch 4.
[118] At [65].
[119] Planner's report at [34].

6.30 The consent authority is to consider the application before it, not contemplate other hypothetical applications[120] — it cannot undertake a comparison of intangible landscape values.[121] The consent authority must exercise caution[122] regarding how much information it seeks about what would in fact be a different proposal.[123]

6.31 Here, it would be a different proposal to not undertake the boundary adjustment and mandate an engineering solution to allow a dwelling to be built with Lot 20's existing boundary. Consideration of alternatives are only appropriate when "relevant and reasonably necessary to determine the application."[124] In the absence of credible evidence of any significant adverse effect on the environment arising from the proposal, the consideration of alternatives is irrelevant.[125]

Application will not burden balance lot with hazard

6.32 Regarding submitters' concerns the balance lot will be burdened by a natural hazard — the application ensures the farm's natural landform features are preserved, prevents exacerbating ground instability and supports the sustainable management of natural resources. Land instability occurring in Lot 20's gully is a natural feature of the farmland.[126]

6.33 Deforested, converted land may experience natural disturbance or erosion.[127] Planting, particularly of native trees can help to stabilise land.[128] The sub-lease recognises the farmland may require repair or replanting due to natural erosion.[129] The land instability on Lot 20, that will become part of Lot 31 is a natural feature,[130] that may be addressed with natural

[120] *Dome Valley Residents Society Inc v Rodney District Council* [2008] 3 NZLR 821 (HC) at [98]. *Glentarn Group Limited v Queenstown Lakes District Council* [2009] ELHNZ 37 at [20].
[121] *Meridian Energy*, above n 115 at [84]. *Mills v Far North District Council* [2018] NZHC 2082 at [156].
[122] *Lakes District Rural Landowners Society Incorporated v Queenstown Lakes District Council* [2001] ELHNZ 385.
[123] *Reuters Homes Limited v Wanganui District Council* HC Wanganui CIV-2010-483-278 (14 June 2011) at [48].
[124] *Meridian Energy*, above n 115, at [65].
[125] *Progressive Enterprises Ltd v North Shore CC* [2009] NZRMA 386 (EnvC) at [16].
[126] KF at [34(a)].
[127] *PF Olsen Limited v Bay of Plenty Regional Council* [2012] NZHC 2392 at [56]; *Federated Farmers of New Zealand (Inc) Mackenzie Branch v Mackenzie District Council* [2017] NZEnvC 53 at [141].
[128] *Federated Farmers of New Zealand Inc v Auckland* Council (as successor to Franklin District Council) [2012] NZEnvC 174 at [40].
[129] JW, A-391, updated sublease at cl., 47.
[130] KF at [27].

solutions, like planting, if required. The balance lot will not be burdened by absorbing a very small portion of naturally unstable land.[131] The application better provides for health and safety outcomes than the currently consented approach.

6.34 The majority of the unstable gully head will remain inside lot 20's boundary after the boundary is adjusted. The balance lot's total area is 56.05 hectares.[132] The **total** area, not just the small area of land subject to instability, absorbed by lot 31 is 1,507m^2, less than 1% of lot 31's total land area. Any risk of instability presented to lot 31 will not impact the ability of the farm to operate normally.[133]

6.35 Moving the building platform to stable land removes the risk of destabilising pre-existing natural land instability.[134] Proceeding with the currently consented building platform will produce a worse outcome for the subdivision as a whole — it generates unacceptable risk for Lot 20's owners, and possible mitigation would blight the landscape.[135]

6.36 Mitigation would require significant civil engineering works to permanently modify the gully.[136] The works would be extensive, visually obtrusive (during construction, and in perpetuity) and out-of-keeping with the nature and character of the subdivision. Permanent landscape modification options include constructing a significant retaining wall, or shear key.[137] Earthworks would be required to facilitate machinery access alone, for the works.[138]

6.37 In contrast, the application preserves the natural landscape, without requiring extensive engineering or landscape modification.[139] NPDC's development engineer accepts the proposed building platform is stable and flood free,[140] as does NPDC's planner.[141] The recent independent

[131] KF at [43].
[132] KF at [40].
[133] KF at [34(a)].
[134] KF at [25(a)].
[135] KF at [30], [38].
[136] KF at [31].
[137] KF at [25(b)].
[138] KF at [21].
[139] KF at [25(c)], [33]).
[140] Planner's report, at page 6, re Sub-S2.
[141] As above.

expert geotechnical evidence supports this, in addition to Tonkin + Taylor's and Red Jacket Limited's 2021 reports.[142]

7. Summary and concluding remarks

7.1 The boundary adjustment proposed in the application is a lawful solution to correct a historic surveying oversight — while simultaneously preserving the estate's amenity.

7.2 The proposal does not have more than minor environmental effects, and any regard made in the consent authority's determination of the application would be a clear and significant error of law.

7.3 For the reasons discussed, the application for resource consent should be granted.

Dated 1 October 2025

A Young

Representative of the Applicants

[142] Lodgment package, at pages 59 – 113.