

**IN THE MATTER OF
AND
IN THE MATTER OF**

the Resource Management Act 1991

a resource consent applications by Washer Family Trust Limited for subdivision boundary adjustment and land use for future dwellings within the side yard at 1 and 9 Washer Road, Omata, New Plymouth (SUB24/50201 & LUC24/48662) and variation of consent notices attached to Lot 20 DP 385658 and Lot 31 DP 385658 imposed via consent conditions on granted resource consent reference number 41299 (SUB24/50201.01)

**DECISION OF THE HEARING COMMISSIONER APPOINTED BY
NEW PLYMOUTH DISTRICT COUNCIL PURSUANT TO SECTION 34A OF
THE RESOURCE MANAGEMENT ACT 1991**

Independent Commissioner:

Mark St.Clair

4 August 2026

APPOINTMENTS

- [1] On 25 August 2025, pursuant to Section 34A of the Resource Management Act 1991 (**RMA**), independent commissioner Mark St. Clair was appointed as a commissioner by New Plymouth District Council (**NPDC**) to hear and determine the application lodged by the “**Applicant**” Washer Family Trust Limited for subdivision boundary adjustment and land use for future dwellings within the side yard at 1 and 9 Washer Road, Omata, New Plymouth (SUB24/50201 & LUC24/48662).
- [2] As explained later in this decision, it was subsequently determined during the hearing process that a resource consent under s221 of the RMA to vary the consent notices attached to Lot 20 DP 385658 and Lot 31 DP 385658, was also required. That application was made on 19 December 2025 and pursuant to Section 34A of the RMA, independent commissioner Mark St. Clair was, on 31 March 2026, appointed as a commissioner by NPDC to hear and determine those variations to the consent notices.

PROCEDURAL MATTERS

Directions and procedural matters

- [3] For completeness I attach the minutes related to the initial hearing (Subdivision and Land Use - 2 October 2025) in **Appendix 1** and in **Appendix 2** the minutes for the second hearing (Variation of consent notices - 16 June 2026).
- [4] The initial minutes leading up to the 2 October 2025 hearing related to the pre-circulation direction under section 103B of the RMA, the hearing date and time, procedures, and my requests for additional information.
- [5] In Minute #3 dated 1 October 2025, I raised the issue as to a consent notice potentially restricting the subdivision, which the Applicant’s counsel Mr Young, addressed at the opening of the hearing on 2 October 2025 and later provided written submissions. I summarise the Applicant’s position as follows; the boundary adjustment being applied for was not within the definition of “subdivision” in the RMA, and as such an application to amend the consent notice under section 221 of the RMA was not required. At this point in the hearing, I advised that I wished to seek independent legal advice on that matter under section 41C of the RMA, to which the Applicant at the hearing was not opposed. Bearing in mind that all of the parties were present and the duty to avoid unreasonable delay under section 21 of the RMA, I proceeded to hear the subdivision and land use substantive matters on the 2nd of October 2025. I adjourned the hearing, with the procedural matters as to the variation of consent notices to continue on the papers, without reconvening the hearing.
- [6] Minutes #4 - #7 (see Appendix 1) set out the questions I sought legal advice on, a timetable for the provision of that advice and for the parties to comment on the legal advice, as well as, a challenge to the use of section 41C of the RMA.
- [7] In Minute #8 dated 18 November 2025 (See Appendix 1), I set out my findings as to the procedural matters in full in that minute, but here in brief, firstly that the application before me is a subdivision of land under section 218(1)(a) of the RMA and second that the consent notice does prevent the boundary adjustment and

proposed disposition of allotments and as such, the consent notice is required to be varied or cancelled before the application can proceed further.

- [8] Further in summary of Minute #8, having considered my delegations I formed the view that I did not have the jurisdiction to consider any section 221 of the RMA application, that the subdivision application could not be advanced at that time and that it was for the Applicant as to how they wished to proceed.
- [9] The Applicant lodged a section 221 of the RMA application to vary the consent notices which was received by NPDC on 19 December 2025, limited notified on 21 January 2026 with the submission period closing on 18 February 2026. Three submissions were received with two submitters indicating they wished to be heard. As such a hearing was required under section 100 of the RMA.
- [10] As I recorded above, see paragraph 2 of this decision report, I was delegated to hear and determine the section 221 of the RMA application on 31 March 2026.
- [11] Again, the initial minutes (1 – 5) leading up to the 16 June 2026 hearing related to the hearing date and time, procedures, a request from the Applicant for the hearing to be on-line, which under section 39AA(4) I declined, my requests for additional information, the extension of timeframes for the filing of evidence, witness attendance, hearing time and initial questions as to scope.
- [12] Minute #6 dated 17 June 2026, set out the timetable for expert conferencing and joint witness statement (JWS) as to conditions, the opportunity of the submitters to comment on the conditions and the Applicant's right of reply. Those timeframes were duly met, although I record that the submitters did not file any comments on the recommended conditions.
- [13] Finally in Minute #7, having reached the view that I had all the material I required, I formally closed the hearing on 14 July 2026.
- [14] Having the subdivision, land use and section 221 of the RMA consent notice variations before me and being delegated to hear and determine all said applications, this decision report addresses those three applications.

Scope

- [15] In relation to the consent notice variations application two issues arose as to scope. The first related to an alternative scheme plan layout to that proposed in the initial subdivision and land use application; 'Option 2' introduced by Mr Rendall¹, planner for the Applicant. As signalled in Minute #4 dated 10 June 2026, the initial question was whether this alternative scheme was within the scope of the application? At the commencement of the hearing on 16 June 2026, Mr Young, counsel for the Applicant, withdrew that alternative. Noting that withdrawal, I do not address the 'Option 2' alternative any further in this decision. For completeness, I record the terms 'Site 1' and 'Site 2' were referenced in the hearings, 'Site 1' being the existing Lot 20 DP 385658 and 'Site 2' being proposed Lot 2, the site resulting from the proposed boundary adjustment.

¹ Evidence in Chief (EIC), Mr Rendall, 29 May 2026, Paras 33 – 39 and Appendix B

- [16] The second scope matter arose out the JWS from the expert planners dated 12 June 2026. That JWS being a set of draft conditions for the subdivision, land use and consent notice variation applications. Importantly, the JWS² reflected an agreed understanding that the consent notice conditions should be cancelled rather than varied, effectively reimposed and that this did not alter the scope of the application as it achieved the same outcome. Mr Rendall recorded a risk with this approach. Both planners also recorded that if this approach was determined to be outside of the scope of the application, then they would prepare another set of conditions, reflecting a variation.
- [17] Again, at the commencement of the hearing, I advised the parties, that my initial thoughts were that a cancellation of the consent notices, had not been applied for, was not the basis of any section 95 of the RMA decision, was not the proposal under which any written approvals had been obtained, that section 221 of the RMA did not provide for the reimposition of consent notices, and that I was not delegated to hear and determine a consent notice cancellation application. Mr Young, for the Applicant, advised that the Applicant sought to vary the consent notices as per the application and was not seeking to cancel the consent notices. Having canvassed the parties, I find that suggested approach in the JWS to cancel the consent notices is beyond the scope of the application and in any case, that is not the application sought by the Applicant. Noting that finding, I do not address the cancellation of the consent notices any further in this decision.

Preliminary matters

- [18] In relation to both applications, submitters raised issues as to the ability of the Applicant as a lease holder to make the applications without consent of the other the owners of Lot 31. Mr Young, counsel for the Applicant submitted that the Applicant³, for the purposes of the RMA by way of the definition of owner⁴ and reference to caselaw, was the owner of Lot 20 DP 385658 and balance lots, and therefore had the ability to apply for the subdivision, land use consent and the variation of the consent notices. In response to my questions at the hearing of 16 June 2026, Mr Buckley, counsel for a group of submitters, accepted that point. I hence find the Washer Family Trust Limited as the owner and is able to make the applications, under the RMA.
- [19] Another issue raised by the submitters in relation to all the applications was futility; the inability of the Applicant, even if consent is granted, to implement the consent. In Mr Buckley's submission he advanced that, *"To register a transfer of any part of Lot 31 at LINZ, instruments of transfer must be executed by all 30 registered proprietors of that lot (Land Transfer Act 2017). No proprietor can be compelled to execute them."*⁵ Mr Buckley submitted that this was a relevant issue under section 104(1)(c) of the RMA .

² Joint Witness Statement, Mr Robinson and Mr Rendall, 12 June 2026, Paras 3.1 – 3.4

³ Legal Submissions, Mr A Young, 15 June 2026, Paras 6 – 8 and Legal Submissions, Mr A Young, 1 October 2025, Paras 6.13 – 6.14 .

⁴ Section 2, Resource Management Act 1991

⁵ Legal Submissions, Mr R Buckley, 15 June 2026, Para 39

- [20] Mr Young, Counsel for the Applicant, specifically addressed futility in reply⁶, submitting that Mr Buckley's submission was inconsistent with the ordinary operation of the RMA and that obtaining consents before obtaining property right is a normal part of the RMA.
- [21] I find that it appropriate deal with this matter here as a preliminary matter. I accept Mr Young's submission for the reasons stated in his reply statement. The transfer is a property matter and not a RMA matter within my jurisdiction. I observe that the risk in relation to any future transfer process is borne by the Applicant.

Other issues

- [22] There were a number of other issues raised by the parties, particularly during the hearings that were not resource management issues. I have not considered these matters as they are outside of my jurisdiction and I have not taken account of those matters in my evaluation of the applications.

Decision Sequence

- [23] At the hearing I sought the views of the parties as to how the applications should be determined, together, sequentially or separately. Mr Young, at the hearing and in reply, noted approaches adopted by myself in previous determinations, of having one decision report (for a subdivision and later land use application)⁷ and in another case having the subdivision decision first, as its outcome determined whether cancellation of the consent condition was required⁸. Mr Young advancing that the same approach as to the sequence was appropriate here. No other party addressed this matter.
- [24] Considering these matters afresh, one decision report for all three applications reduces duplication and is therefore timelier and more efficient in terms of section 18A of the RMA. I have adopted that approach. As to the sequencing, I observe that the application before me (Washer Road) for is a variation of a consent notice not a cancellation of consent notice. In making that the distinction I find that the variation of consent should be first decision; thus allowing the subdivision and land use to occur. The latter being a second and third decision, allowing for the fact that they are separate consent types. That seems to be the logical approach.

Site visit

- [25] As explained the first hearing, I undertook a site visit on 1 October 2025 to familiarise myself with the subject site and the surrounding environment. Also as explained at the hearing I was accompanied by Ms Kelly, Governance Advisor at NPDC and the administrator for both hearings. As signalled in Minute #1 dated 24 April 2026, I did not undertake any further site visits.

⁶ Reply Statement, Mr A Young, 7 July 2026, Paras 42 - 43

⁷ Decision of Independent Commissioner Mark St. Clair, 28 June 2023: resource consent application by B, M and R Sim for a six (6) lot subdivision and land use at 6 and 42 Leith Road, Okato, New Plymouth (SUB21/47781 and LUC22/48312)

⁸ Wellington City Council, Lloyd Family Trust for a five (5) lot subdivision and cancellation of a consent notice at 330 Horokiwi Road, Horokiwi, Wellington (Service Request Number (SR) 490041) – April 2025.

Decision format

[26] I have had regard to the requirements of Section 113 of the RMA when preparing this decision. In particular I note and have acted in accordance with Section 113(3) which states:

“A decision prepared under subsection (1) may, -

- (a) instead of repeating material, cross-refer to all or a part of -*
 - (i) the assessment of environmental effects provided by the applicant concerned;*
 - (ii) any report prepared under section 41C, 42A, or 92; or*
- (b) adopt all or a part of the assessment or report, and cross-refer to the material accordingly.”*

[27] During the course of the hearing it became apparent that there were particular issues in relation to amenity values, geotechnical and natural hazard effects, property values and various procedural matters. I therefore focused my questions on these matters. I have consequently focused my decision on those same matters. For completeness, I record that I have relied on all the material and presentations across both hearings in the preparation of my decision.

THE APPLICATION PROCESS

Subdivision and Land use

[28] Landpro, filed an application on behalf of Washer Family Trust Limited for a boundary adjustment a subdivision consent and land use consent at 1 and 9 Washer Road, (Lot 20 and 31 DP 385658) Omata, New Plymouth (the **subject site**) dated 14 November 2024, and was accepted by NPDC.

[29] NPDC sought additional information on 17 January 2025 and 29 January 2025, which was duly provided.

[30] The application was limited notified on 25 June 2025 with the submission period closing on 22 July 2025. NPDC received nine (9) submissions within the submission period. There were no late submissions.

[31] A summary of the submissions was detailed in the Section 42A report⁹ prepared by Mr Robinson. One (1) submission was in support – grant and eight (8) submissions were opposed seeking the application be declined.

Section 221 of the RMA – variation of consent notice

[32] Landpro, filed an application on behalf of Washer Family Trust Limited for a variation to consent notices for Lot 20 and Lot 31 DP 385658 at 9 Washer Road, (Lot 20) Omata, New Plymouth (the **subject site**) which was received by NPDC on 19 December 2025.

⁹ Section 42A Report, Mr C Robinson, 10 September 2025, Paras 27 - 28

- [33] The application was limited notified on 21 January 2026 with the submission period closing on 18 February 2026. NPDC received 3 submissions within the submission period. There were no late submissions.
- [34] A summary of the submissions was detailed in the Section 42A report¹⁰ prepared by Mr Robinson. One (1) submission was in support – grant, one (1) neutral – grant with relief sought or otherwise decline and one (1) submission opposed seeking the application be declined.
- [35] I record that I read the submissions in full and I have had regard to them, the submitters presentations and material handed up during the hearing as part of my evaluation of the application.
- [36] For both hearings, the Applicant filed expert, engineering geology¹¹ and planning¹² evidence. In addition, three Joint Witness Statements (JWS) as to conditions of consent and consent notice wording, should the applications be granted ¹³ were also filed.
- [37] For completeness, I record that Applicant obtained the written approval for the subdivision and land use application from effected persons at 1, 3, 4, 6, 7, 10 - 12, 16 - 18, 20, and 25 – 30 Washer Road.¹⁴ In addition, I record that Applicant obtained the written approval for the s 221 of the RMA variation of consent notices application from effected persons at 1, 3, 4, 5 - 7, 11, 12, 16 - 18, 20, and 25 – 27, 29 and 30 Washer Road.¹⁵
- [38] As noted above, all expert evidence was pre-circulated in accordance with Section 103B of the RMA. I record that I read all of the evidence and joint witness statements, submissions and presentations, legal submissions, material handed up during the hearing and have taken them into account as part of my evaluation of the application.

THE HEARINGS and ATTENDANCES

- [39] The initial hearing was held in the New Plymouth Room at the New Plymouth District Council Offices, 84 Liardet Street, New Plymouth on 2 October 2025, commencing at 9:00am.
- [40] I set out the detail of the initial hearing in paragraphs 5 - 8 above, with the hearing being adjourned at 4.45pm on the same day. This hearing remained adjourned until the section 221 of the RMA application to vary the consent notices essentially 'caught up'.
- [41] The second hearing was held in the Council Chambers at the New Plymouth District Council Offices, 84 Liardet Street, New Plymouth on 16 June 2026, commencing at 9:00am. I adjourned the hearing at 3.02pm on the same day, in order for the planners to conference on conditions, any submitters from the hearing to provide comments on the conditions and for the Applicant's right of reply in writing.

¹⁰ Section 42A Report, Mr C Robinson, 22 May 2026, Paras 26 – 27 and Memorandum, 26 May 2026, Mr C Robinson

¹¹ EIC 17 Sept 2025 Ms K Franklin and EIC 29 May 2026, Ms K Franklin

¹² EIC 17 Sept 2025 Mr C Rendall, EIC 29 May 2026 Mr C Rendall, and EIC 29 May 2026 Ms K Hooper

¹³ Joint Witness Statement (JWS) – Planning Conditions, 7 November 2025, JWS – Conditions, 12 June 2026 and JWS – Conditions, 23 June 2026

¹⁴ Section 42A Report, Mr C Robinson, September 2025, Para 30 Table 4

¹⁵ Section 42A Report, Mr C Robinson, 22 May 2026, Para 25 Table 2

- [42] The revised recommended conditions from the planners and the reply statement from the Applicant was duly filed and distributed to the parties. The submitters did not file any comments on the recommended conditions.
- [43] Having considered that I had all the information I required, I closed the hearing by way of minute (Minute #7 – Appendix 2) on 14 July 2026.
- [44] The attendances at the hearing were as follows:

Applicant

- [45] For the Applicant on both 25 October 2025 and 16 June 2026:
- Mr Alex Young - Counsel for the Applicant
 - Mr John Washer – for the Washer Family Trust Limited (the “Trust”) – the Applicant and operator of the farm by way of lease.
 - Ms Kristel Franklin, Senior Engineering Geologist, Red Jacket Ltd;
 - Mr Christopher Rendall – Principal Planner, Landpro Ltd.

Submitters

- [46] For the submitters in opposition on 25 October 2025;
- Mr Stephen Frowde
 - Mr Jimmy Seed and Mrs Denise Seed
- [47] For the submitters in support on 16 June 2026;
- Mr S Heinemann
- [48] For the submitters in opposition on 16 June 2026;
- Mr Randy Buckley – Legal Counsel
 - Mr Patrick Cameron
 - Mr Stephen Frowde
 - Mr Jimmy Seed and Mrs Denise Seed

Council officers

- [49] The following consultant was in attendance and responded to matters raised at the two hearings;
- Mr Campbell Robinson – Consultant Planner for NPDC.
- [50] Section 42A officer’s reports were prepared by Mr Robinson for both hearings.
- [51] I was assisted in an administrative capacity for both hearings by Ms Claire Kelly, Acting Manager Governance at NPDC.
- [52] I record that Ms K Hooper, a planner for the Applicant filed a brief of planning evidence. I had no questions for Ms Hooper and Ms Hooper did not attend the hearing.

- [53] All of the material presented by the above parties is held on file at NPDC. I took my own notes of the verbal presentations and any answers to my questions. For the sake of brevity, I do not repeat that material in the decision. However, I do refer to relevant matters raised in the material in subsequent parts of the decision.

LEGAL DESCRIPTION AND ZONING

- [54] The property ("**the subject site**") is legally described as follows:

Legal Description:	Lot 20 and Lot 31 DP 385658
Site Area:	Lot 20 DP 385658 = 4070 metres squared and Lot 31 DP 385658 = 56.0513 Ha
Site Address:	1 and 9 Washer Road, Omata, New Plymouth
District Plan Zone:	Part Operative District Plan – Rural Production Zone

THE SITE DESCRIPTION AND SURROUNDING ENVIRONMENT

- [55] The site description and surrounding environment were detailed in the applications¹⁶ and summarised in the Section 42A Reports¹⁷. These descriptions were not challenged and I adopt them.

THE PROPOSAL

- [56] Before addressing the proposal itself, I provide a brief background as to the development of the subject site for contextual purposes. The subject site is within a farm park, the Tapuae Estate, which is made up of 30 rural residential lots with the residual land used for farming and recreational purposes (e.g. tennis courts).
- [57] The initial consent for the development was for twenty (20) rural residential lots granted in December 2002, for a farm park, including esplanade reserves and strips, public vehicular access and parking, landscape integration and enhancement planting, with each lot having an equal share in the balance lot. This was followed by a further six (6) rural residential lots granted in January 2004. A further consent was granted in July 2006 to create four (4) additional rural residential lots, this latter consent bringing the total number of lots to thirty (30). This latter consent included a condition not in the previous two consents, that;
7. *Lots 31 and 32 shall not be further subdivided and cannot be disposed other than in conjunction with lots 1 to 30.*
- [58] This condition was included as a consent notice registered against the records of title for Lot 31 and 32 DP 385658, recorded as Consent Notice No 789038. I observe that the 2006 subdivision consent decision does not discuss the reasons why a condition notice was imposed. In addition, I also observe that a similar consent notice restricting subdivision is not registered on title of Lot 20, DP 385658; the other lot which is the subject of the applications before me.

¹⁶ Resource Consent Application to New Plymouth District, prepared for Washer Family Trust, 24 July 2024, Landpro – Sections 2 and 3 and Consent Notice Variation Application to New Plymouth District, prepared for Washer Family Trust, 19 December 2025, Landpro – Section 2.1

¹⁷ Section 42A Report, Mr C Robinson, 10 September 2025, Paras 9 - 14 and Section 42A Report, Mr C Robinson, 22 May 2026, Paras 8 -13

- [59] The proposal was described in the applications¹⁸, and summarised in the Section 42A officer's reports¹⁹. Mr Rendall, summarised the proposal in both briefs of evidence²⁰, which generally aligned with Section 42A Report.
- [60] By way of overview, I have included a brief description of the proposal here, as a record of the matter being considered. This is primarily the proposal description from the Section 42A Report with additional points from Mr Rendall's evidence and raised during the hearing, as well as, the updated scheme plan in the Planners' JWS of 26 June 2026, which includes Area A that identifies all areas where it is unsuitable for non-residential buildings and soak holes, including incorporating the 15m setback from the head of the Gully and Area B the 24.2m setback.
- [61] In summary the proposal is;
- Subdivision - to undertake a 2-lot boundary adjustment of 2 existing records of title (Lot 20 DP 385658 and Lot 31 DP 385658) as shown in Figures 2 and 3 and described in Table 1.

Table 1: Proposed Subdivision: 1 and 9 Washer Road.

Lot #	Area	Proposed Use	Notes
Lot 1:	0.4070ha	Rural residential allotment to be developed later.	The proposed lot boundaries would be moved approximately 40m eastwards from their current location. The area of Lot 1 would be the same as the area of existing Lot 20 DP 385658.
			Access to Lot 1 would continue to be via the already established internal private road network. Existing easements and consent notices would be transferred to the new title.
Lot 2:	56.0573ha	Balance estate allotment.	Lot 2 would be retained for rural production and common recreational purposes as the Tapuae Estate balance lot. Consistent with the current ownership of Lot 31 DP 385658, Lot 2 would be held in 1/30 th shares. All existing access to this lot would be retained. Existing easements and consent notices would be transferred to the new title.

¹⁸ Resource Consent Application to New Plymouth District, prepared for Washer Family Trust, 24 July 2024, Landpro – Section 2.2 and Consent Notice Variation Application to New Plymouth District, prepared for Washer Family Trust, 19 December 2025, Landpro – Section 2.2

¹⁹ Section 42A Report, Mr C Robinson, 10 September 2025, Paras 15 – 17 and Table 1, and Section 42A Report, Mr C Robinson, 22 May 2026, Paras 19-21 and Table 1

²⁰ EIC, Mr C Rendall, 17 September 2025 and EIC, Mr C Rendall, 29 May 2026

EXISTING EASEMENTS

Subject to a right to convey electricity in gross over parts marked B.C.D.E.G.H.M.R.S.T.U.V.W.X & Z on DP 385658 in favour of Powerco Limited created by Easement Instrument 7890638.37

Subject to a right to convey telecommunications and computer media in gross over parts marked B.C.D.E.G.H.I.L.M.R.S.U.V.W.X & Z on DP 385658 in favour of Telecom New Zealand Limited created by Easement Instrument 7900639.38

Subject to a right to drain water in gross over parts marked A.P.A.R. & Q on DP 385658 in favour of New Plymouth District Council created by Easement Instrument 7890638.39

EXISTING LAND COVENANTS

7890638.24 Consent Notice pursuant to Section 221 Resource Management Act 1991 - 29.7.2008 at 9:00 am (Affects Lot 20 DP 385658)

Building Typology, materials and restrictions

7890638.35 Consent Notice pursuant to Section 221 Resource Management Act 1991 - 29.7.2008 at 9:00 am

Balance Land - revegetation and preservation of existing bush

7890638.36 Consent Notice pursuant to Section 221 Resource Management Act 1991 - 29.7.2008 at 9:00 am (Affects Lot 31 DP 385658)

Balance Land - Conservation Covenant

EXISTING AMALGAMATION CONDITION

That Lots 31 and 32 hereon (legal access) be held as to thirty undivided one-thirtieth shares by the owners of Lots 1 to 19, Lots 21 to 30 DP 385658 and Lot 1 hereon as tenants in common in the said shares and that the individual Certificates of Title be issued in accordance therewith.

PROPOSED AMALGAMATION CONDITION

That Lot 2 hereon and Lot 32 DP 385658 (legal access) be held as to thirty undivided one-thirtieth shares by the owners of Lots 1 to 19, Lots 21 to 30 DP 385658 and Lot 1 hereon as tenants in common in the said shares and that the individual Records of Title be issued in accordance therewith.

PROPOSED SUBDIVISION OF LOTS 20 AND 31 DP 385658
9 Washer Road, Omata

South Road SH 45
17158 Certificate declaring State Highway 45 adjoining the within land to be a Limited Access Road

Washer Road

Refer Sheet 2

Comprised in Records of Title
342917 342918 342919 342920 342921 342922 342923 342924
342925 342926 342927 342928 342929 342930 342931 342932
342933 342934 342935 342936 342937 342938 342939 342940
342941 342942 342943 342944 342945 342946 342947 342948

CONSENT

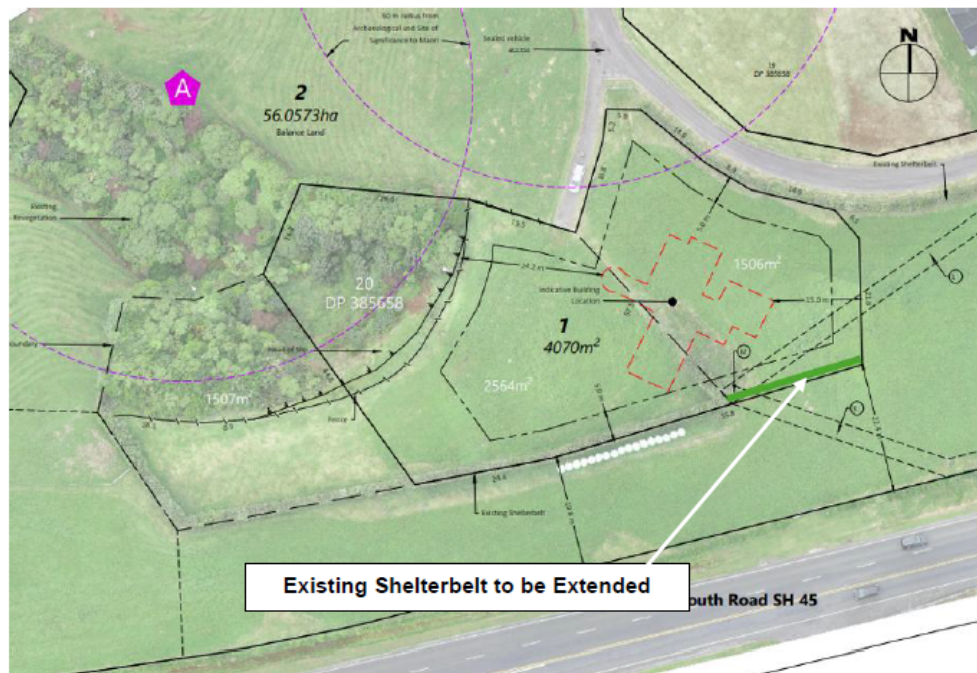
Note:
The distance from the head of the gully to define Area B is based on the recommended minimum setback in Red Jacket report reference RPT-4317 REV-B, dated July 2021, which stated that the slope would need to be at least 2% IV to be outside the area of potential instability, as measured from the base of the gully.

mKinlay 28A Manadon Street PO Box 116 New Plymouth 6340 New Plymouth 06 759 5342 Fax: 06 759 4456 www.mckinlaysurveyors.co.nz	TITLE PROPOSED SUBDIVISION OF LOT 20 AND 31 DP 385658 9 Washer Road, Omatia	RECORD OF TITLE Refer Sheet 1 TERRITORIAL AUTHORITY New Plymouth District Council APPLICANT Washer Family Trust	TOTAL AREA 56.4533ha DATE 18/06/26 SCALE 1:500 @ A2	JOB NO W-211212 DRAWN BY RC01 SHEET 2 OF 2
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CONSENT

- Land use - the ability to establish a future dwelling on proposed Lot 1 within 5m of the new boundary with new boundary of proposed Lot 2 as shown on Figure 3. The extension of the existing shelter belt as shown in Figure 4.

Figure 4 – Shelterbelt Extension



- Variation of consent notices - to vary two existing consent notices registered against Lots 20 and 31 DP 385658, as shown in Table 1:

Consent Notice	Lot	Existing Wording	Proposed Wording
7890638.24	20	Buildings and soak holes on Lot 20 shall be set back 15 metres from the top of the gully.	Buildings and soak holes on Lot 20 must be set back at least 15 metres from the top of the gully. A building or soak hole may be set back from the top of the gully by more than 15 metres.
7890638.35	31	That Lots 31 & 32 shall not be further subdivided and shall not be disposed other than in conjunction with Lots 1-30 inclusive.	That Lots 31 & 32 shall not be further subdivided and must not be disposed of other than in conjunction with Lots 1-30 inclusive except to the extent required to give effect to any consent granted in relation to the consent application SUB24-50201. Advice note: For the avoidance of doubt, this consent notice has been varied to only allow the boundary change between Lot 20 and Lot 31 that will facilitate changing the boundary between the two lots, to allow Lot 20's building platform to be relocated.
7890638.35	31	There shall be no residential building located on Lots 31 or 32	If, in relation to SUB24-50201 & LUC24-48662 a portion of Lot 31 becomes part of Lot 20, the part of Lot 20 that was formerly Lot 31, may have a residential building constructed on it. Otherwise, there shall be no residential building located on Lots 31 or 32.

ACTIVITY STATUS

- [62] For the subdivision and land use application the Section 42A Report set out the status of the Part Operative District Plan, to which there were no appeals that applied.²¹ That Section 42A Report similarly identified the applicable rules for both the subdivision and the land use applications and that the activity status when adopting the bundling approach was discretionary²². In evidence and in response to my questions in relation to the rule sand activity status, Mr Rendall agreed with Mr Robinson's assessment²³.
- [63] For the section 221 of the RMA consent notice variation application the planners similarly concurred with that the activity status was discretionary.²⁴
- [64] Overall, the planners' view was that the subdivision and land use application was to be considered as a discretionary activity and that the consent notice variation application was also a discretionary activity. Hearing nothing to the contrary, I adopt those positions.

STATUTORY PROVISIONS

- [65] These applications fall to be considered as a discretionary activity under Part 2 and Sections 104 and 104B²⁵, of the RMA.

SECTION 104B OF THE RMA

- [66] As a discretionary activity, the applications must be considered against the requirements of Section 104B, which states that:

104B Determination of applications for discretionary or non-complying activities

After considering an application for a resource consent for a discretionary activity or non-complying activity, a consent authority—

(a) may grant or refuse the application; and

(b) if it grants the application, may impose conditions under section 108.

PRINCIPAL ISSUES IN CONTENTION

- [67] The principal issues in contention, as I have determined them, include:

- Amenity effects;
- Geotechnical and natural hazards effects;
- Property Values

I address these issues in the following sections.

²¹ Section 42A Report, Mr C Robinson, 10 September 2025, Para 20

²² Section 42A Report, Mr C Robinson, 10 September 2025, Paras 20 – 224 and Tables 2 and 3

²³ EIC, Mr C Rendall, 17 Sept 2025, Para 17 (b), (j)

²⁴ Section 42A Report, Mr C Robinson, 22 May 2026, Para 22 and Table 2, and EIC, Mr C Rendall, 29 May 2026, Para 41

²⁵ Sections 127 and 221 of the RMA directing to these sections

Amenity and Rural Character Effects

- [68] Amenity effects were the major point of contention for both hearings. The submitters in the presentations of Mr Cameron, Mr Frowde, Mr and Mrs Seed and in Mr Buckley's legal submissions and presentation, drew my attention of several matters that they identified as amenity effects which I summarise as including;
- Amenity is tied to submitters status as freeholder owners of shared land, includes legal and practical enjoyment of co-owned land;
 - Permanent loss of shared owners to access and use;
 - Peoples' appreciation of the area around the subject site and surrounds;
 - The reduction in distances between dwellings around Lots 18, 19 and 20 DP 385658 and any future dwelling being at higher elevation – increase in density and/or intensity;
 - View shaft through to Mt Taranaki;
 - Amenity is not just landscape effects, and size is not the measure;
 - There are cultural and recreational attributes that apply; and
 - People walk through the area around the subject site.
- [69] Mr Robinson, in the Section 42A Report, noted the position of the submitters as to the ability to use and appreciate land over which they have a shared legal right; considered the matters raised were best categorized as being related to amenity values. Further that in relation to amenity values, *"... I consider that unmitigated, the level of effects would be significant and that the proposal would permanently impact on the submitter's appreciation of the land. Once established, the effects could not be easily undone as the new boundaries would not be easily reversible."*²⁶ Mr Robinson remained of the same view in the Section 42A Report for the second hearing as to the application for the variation of the consent notices.²⁷
- [70] The submitter in support Mr Heinemann, the closest neighbour to the subject site, noted the written approval of the other lot owners in close proximity to subject site and expressed the view that the amenity would not change.
- [71] Mr Young submitted, in summary, that the matters raised by the submitters were not within the definition of effect under the RMA²⁸, that Mr Robinson's analysis of amenity effects was not legal not legally or factually correct and that many of the matters raised by submitters were property rights not able to be considered in this forum.²⁹
- [72] Mr Washer in evidence and in response to my questions explained that for health and safety reasons, individual lot owners were unable to access the areas used for farming purposes. This was disputed by the submitters in opposition.
- [73] Mr Rendall, in summary from evidence, opined that the only potential generation of amenity effects was from the moving of the existing lot closer to other existing dwellings, all of whom had provided their written approval. Mr Rendall noted the distance and topographical changes between the subject site and the submitters in opposition, concluding that there would be effectively no effects on amenity from the

²⁶ Section 42A Report, Mr C Robinson, 19 September 2025, Para 64

²⁷ Section 42A Report, Mr C Robinson, 22 May 2026, Para 57

²⁸ Legal Submissions, Mr A Young, 1 October 2025, Paras 4.1 – 4.8

²⁹ *Ibid.* Paras 6.5 – 6.14

proposal.³⁰ Finally, Mr Rendall was of a contrary view to Mr Robinson as to appropriate connection of amenity effects to the matters raised by the submitters and as to Mr Robinson's attribution as to the significance of those effects.³¹

- [74] For completeness I record that the planning witnesses Mr Robinson³² and Mr Rendall³³ were in agreement that the proposal will not adversely affect the rural character of the site or wider area. I adopted the reasoning of the planning experts Mr Rendall and Mr Cameron that rural character is not affected by the proposal in that the subject site remains as for a single dwelling and there is no increase in the number of lots.
- [75] I have carefully considered all of the matters raised by the parties as to amenity effects. I accept in part the submission from Mr Young that the characterisation of the effects of subdivision are more property matters and not amenity effects. I am not persuaded by Mr Robinson's evidence or Mr Buckley's submission that all the matters they raised are amenity effects. Rather considering amenity effects under the RMA, I note the distance of the submitters' individually held properties from the subject site and that there are negligible effects as to the outlook from those properties. I also record that all the properties around the subject site provided their written approval, so I do not take account of the effects on those properties.
- [76] I record that the District Plan does not provide for any view shafts from the farm park and I find that access around the subject site, regardless of the views of the parties as to the nature of access across the farm park, is not particularly affected by the proposal as to generate potential amenity effects.
- [77] In addition, I find the proposal does not result in an increase in the number lots across the farm park as a whole. It remains as per the final consent that established the farm park. Noting the size of the farm park and the size of the proposed boundary adjustment, I find the scale and significance of any resulting amenity effects to be acceptable. Again, I am not persuaded by Mr Robinson's opinion that the amenity effects would be significant.
- [78] For completeness, in finding that there no significant effects as to amenity, the assessment of alternatives is not required.
- [79] I conclude that the amenity effects to be considered under the RMA are acceptable.

Geotechnical and Natural Hazard Effects

- [80] Before addressing geotechnical and natural hazards effects, I need to address an issue raised by Mr Buckley on behalf of a group of submitters. In summary, Mr Buckley³⁴ identified that Red Jacket's geotechnical report that accompanied the application, stated the building to be positioned "at least 40m from the top of the gully at the closest point" (RPT-4317-A-01 Rev A, Table 3-1). Whereas the

³⁰ EIC, Mr C Rendall, 17 September 2026, Paras 48 - 52

³¹ *Ibid.*, Para 53

³² Section 42A Report, Mr C Robinson, 19 September 2025, Paras 51 – 54 and Section 42A Report, Mr C Robinson, 22 May 2026, Para s 43 - 47

³³ EIC, Mr C Rendall, 17 September 2026, Para 47 and EIC, Mr C Rendall, 29 May 2026, Para 28

³⁴ Legal Submissions, Mr R Buckley, 15 June 2026, Paras 28 - 34

recommended conditions of consent from the Planners' JWS³⁵, require a dwelling to be, *"setback by a minimum distance of 24.2 metres from the head of the gully..."*³⁶ Mr Buckley submitted that this was new information.

- [81] In response to my questions, Mr Young and Mr Rendall explained that 40m offset was from an earlier Tonkin and Taylor Report dated 28 September 2021, which had been confirmed as erroneous. The correct offset being identified in the 28 April 2025 response from the Applicant's engineer's, RED Jacket Limited, to a specific request for further information from NPDC under section 92 of the RMA.³⁷
- [82] Firstly, I record that this further information with the correction as to the setback was available to all parties at the time of the limited notification of the initial subdivision and land use application. Secondly, I record that this matter was also addressed in the Section 42A Report of Mr Robinson, where he noted that Council's Development Engineer, Ms Subi-Manilal accepted the further information response and concurred that a distance of at least 23m from the head of the gully was an appropriate setback.³⁸
- [83] Considering all of the of the above, the documents filed and the views of the parties expressed that the hearing, I accept the setback as confirmed by the section 92 of the RMA response of 28 April 2025, was part of the application as notified and is not new information. I address the appropriateness of the setback later in this section of the decision.
- [84] The submissions raised issues as to inclusion of slip prone land into Lot 31, the joint owned land used for farming purposes. At the hearings, Mr and Mrs Seed and Mr Frowde specifically drew my attention to the liability that they saw as transferring to them as owners as a result of the boundary adjustment. It would be inappropriate for me assert any investigation or findings on liability. That is not within my considerations under the RMA. I confine myself to the consideration of environmental effects.
- [85] Also at the hearing, and as a separate issue from the matter I address in paragraphs [80] – [83] above, Mr Buckley questioned if the setback distance was safe and issues as to the National Policy Statement for Natural Hazards (**NPS-NH**) assessment.
- [86] The only expert geotechnical and engineering evidence presented at the hearings was from Ms Franklin a Senior Engineering Geologist, on behalf of the Applicant. At the first hearing Ms Franklin's evidence set out the methodology and information reviewed, the geotechnical review undertaken and, responded to geotechnical and engineering matters raised in submissions and the Section 42a Report. In summary Ms Franklin noted the unacceptably high risk to development on existing Lot 20, engineering works and substantial earthworks required to mitigate the slip to reduce the risk to the existing Lot 20, the "good ground" for the proposed building platform for proposed lot 2 (boundary adjusted site) and the land stability around the slip, and that the slip was an existing natural process that posed a negligible risk across Lot 31 for its continued use for agricultural purposes.³⁹

³⁵ Planners' JWS, 12 June 2026

³⁶ Planners' JWS, 12 June 2026, Decision 1 – Condition 4

³⁷ Section 92 of the RMA Response from Red Jacket to NPDC, 28 April 2025

³⁸ Section 42A Report, 10 September 2025, Paras 43 - 46

³⁹ EIC, Ms K Franklin, 17 September 2026

- [87] At the second hearing, Ms Franklin's evidence focused on the risk assessment under the NPS-NH which came into effect in January 2026. Ms Franklin's assessment was that NPS -NH assessment for 'Site 1' was high and the assessment of 'Site 2' was low. Ms Franklin concluded that, "*... there are no different outcomes between the risk-based proportionate approach in comparison to the assessment and recommendation provided to date.*"⁴⁰
- [88] Ms Franklin responded to my questions around stability, the approach for setback calculations and provided clarification as to the circumstances for avoidance of natural hazards under the NPS-NH.
- [89] In the Section 42A Reports I note Mr Robinson's advice that a Council's development engineer, Ms Subi-Manilal, accepted that a stable and flood free building platform could be established on proposed Lot 1.⁴¹ Mr Robinson also recommended, should consent be granted, that the foundation for any new building on proposed Lot 1, be designed to reflect the recommendations of the engineering advice, which should be formalised by way of a consent notice under section 221 of the RMA.⁴²
- [90] In considering the potential geotechnical and natural hazard effects and points raised by the parties I am persuaded by the expert evidence of Ms Franklin as to the setback and suitability of the building platform for proposed Lot 1 and the risk assessment detailed in her evidence. Noting the acceptance of Council's development engineer, I find, subject to the imposition of appropriate conditions the geotechnical and natural hazard effects to be acceptable.

Property Values

- [91] Loss of property values was an effect raised by submitters. Mr Frowde, expanding on his submission that the proposal would result in a diminishing of property values also noting that the result of the proposed subdivision was bush covered land being brought into the farming operation land with an impact of farm profitability. Mr Washer, in response to my questions, stated that any difference would be minimal and make no change to the farming operation. Mr Buckley, on behalf of a group of submitters, raised a similar issue in that the exchange of land is materially unequal with no valuation or assessment of equivalence and no compensation or mitigation provided. In the Section 42A Report Mr Robinson opined that property values were outside the remit of the RMA.⁴³ In response to questions Mr Buckley responded that property values were not necessarily applicable in the scheme of the RMA but assisted in the greater context. In submissions and in response to my questions, Mr Young submitted that under the RMA the principle was that property values could not be considered as a standalone point, rather it has to be considered in relation to actual environmental effects.⁴⁴
- [92] I accept that reasoning and caselaw submitted by Mr Young, concluding that the effects should be assessed on their own, as I have set out above.

⁴⁰ EIC, Ms K Franklin, 29 May 2026, Para 21

⁴¹ Section 42A Report, Mr C Robinson, 22 May 2026, Paras 50 - 51

⁴² *Ibid*, Para 53

⁴³ *Ibid*, Para 58

⁴⁴ *City Rail Link Ltd v Auckland City Council* NZEnvC 204, 2017 and *Foot v Wellington City Council*, Environment Court W73/98, 199

ISSUES NOT IN CONTENTION

[93] The issues not in contention, as I have determined them, include:

- Application of permitted baseline; and
- Other issues.

Application of permitted baseline

[94] The issue of the applicability of the permitted baseline was addressed in the Section 42A reports of Mr Robinson.⁴⁵

[95] Section 104 (2) of the RMA states that:

- (2) *When forming an opinion for the purposes of subsection (1)(a), a consent authority may disregard an adverse effect of the activity on the environment if a national environmental standard or the plan permits an activity with that effect.*

[96] Mr Robinson's view was the permitted baseline should not be applied because the subdivision of land requires resource consent in all cases regardless of scale and intensity and similarly because the proposal involves a variation of consent notices which are in all cases discretionary activities under section 127 of the RMA. In response to my questions Mr Rendall was also of the view that the permitted baseline did not apply. I adopt that reasoning and find that the application of the permitted baseline in this case is not appropriate.

Other issues

[97] In Mr Robinson's Section 42A Reports, Mr Rendall's evidence and in response to my questions, both planners were in agreement as to acceptability as to the effects in relation to; waterbodies, the coastal environment – the proposal being outside the District Plan coastal environment overlay, access and traffic – no change to proposed to the existing vehicle access and cultural values – the proposal does not affect any scheduled sites and Ngāti Tāiri Hapū provided endorsement of the proposal. These issues were not raised in submissions. I accept and adopt the assessment of Mr Robinson and Mr Rendall as to these other issues.

EFFECTS CONCLUSION

[98] Having considered all of the evidence on the matter of effects, overall, I am satisfied in terms of resource management effects that the proposal does not create adverse effects, that subject to conditions would be acceptable.

Section 104 RMA

[99] Section 104 (1) of the RMA requires that a consent authority:

- (1) *When considering an application for a resource consent and any submissions received, the consent authority must, subject to Part 2, have regard to—*

⁴⁵ Section 42A Report, Mr C Robinson, 22 May 2026, Paras 28 – 30 and Section 42A Report, Mr C Robinson, 10 September 2026, Paras 27 - 29

- (a) *any actual and potential effects on the environment of allowing the activity;*
and
- (b) *any relevant provisions of—*
 - (i) *a national environmental standard;*
 - (ii) *other regulations;*
 - (iii) *a national policy statement;*
 - (iv) *a New Zealand coastal policy statement;*
 - (v) *a regional policy statement or proposed regional policy statement;*
 - (vi) *a plan or proposed plan, and*
- (c) *any other matter the consent authority considers relevant and reasonably necessary to determine the application.*

[100] I have discussed the significance of any actual or potential effects on the environment of allowing the activity in the above sections and turn now to the statutory provisions requirement of Section 104(1)(b).

National instruments

[101] It was common ground that the National Policy Statement – Natural Hazards (NPS-NH) (came into effect 15 January 2026) was applicable to the applications. In the Section 42A Report⁴⁶ Mr Robinson considered the applications consistent with the NPS-NH and Mr Rendall while agreeing Mr Robinson, going further to opine that in considering the NPS-NH, that there is no reason to refuse consent.⁴⁷ Mr Buckley submitted that the geotechnical evidence did not establish the proposed building platform was safe and that the application could not satisfy the NPS-NH.⁴⁸ I have already made my findings as to the geotechnical evidence in the effects assessment above. Reflecting that earlier finding, I accept the reasoning of Mr Robinson and Mr Rendall in concluding that the proposal is consistent with the NPS-NH.

[102] Mr Robinson considered that the National Policy Statement – Urban Development 2020 (NPS-UD), did not apply, the subject site, not being located in an urban area.⁴⁹ Similarly, Mr Robinson considered that land where the boundary adjustment occurred was outside the District Plan Coastal Environment Overlay and in response to questions that the New Zealand Coastal Policy Statement was not applicable. Finally, Mr Robinson stated that in relation to the National Policy Statement for Highly Productive Land (NPS-HPL), given the proposal did not result in a net increase in the number lots, there was no inconsistency with the NPS-HPL.⁵⁰ Mr Rendall concurred with these positions variously in evidence and in response to questions. I heard no evidence to the contrary. I accept the evidence of Mr Robinson and Mr Rendall.

[103] I record that no other national instruments were drawn to my attention.

Taranaki Regional Policy Statement 2010 (“the RPS”)

[104] Given the localised nature of the proposal, Mr Robinson’s view was that the RPS was not particularly relevant.⁵¹ Mr Rendall agreed.⁵² I heard nothing to the contrary and accept the evidence of Mr Robinson and Mr Rendall for the reasons stated.

⁴⁶ Section 42A Report, Mr C Robinson, 22 May 2026, Paras 63 - 69

⁴⁷ EIC, Mr C Rendall, 29 May 2026, Paras 41- 43

⁴⁸ Legal Submission, Mr R Buckley, 15 June 2026, Section 4

⁴⁹ Section 42A Report, Mr C Robinson, 10 September 2025, Para 35

⁵⁰ *Ibid*, Paras 73 - 76

⁵¹ *Ibid*, Paras 77 - 79

⁵² EIC, Mr C Rendall, 17 September 2025, Para 64

Partially Operative New Plymouth District Plan (PODP)

- [105] On 29 August 2025, the Part Operative District Plan came into effect with the majority of the objectives, policies and rules being beyond challenge, apart from a small number of appeals affecting specific properties. The site zoning being Rural Production Zone (RPROZ) and Mr Robinson advised that there no specific appeals applicable.
- [106] Mr Robinson identified the following as relevant to the proposal:
- Objectives: SUB-O1 to SUB-O3, RPROZ-O1 to RPROZ -O5, CE-O1 to CE-O4, WB-O1 to WB-O4, SUB-O1 to O3, SASM-O1 to SASM-O3.
- Policies: SUB-P1 to SUB-P5, SUB-P10, SUB-P12, SUB-P14, SUB-P15, RPROZ-P1 to RPROZ-P7, CE-P2 to CE-P4, CE-P8, CE-P9, WB-P1 to WB-P9, SASM-P1 to SASM-P8⁵³
- [107] Mr Robinson, generally opined the consistency of the proposal with objectives and policies, with the exception of “amenity” particularly in the RPROZ objectives and policies, as well as, Policy SUB-P15 and for land stability risks transferred to the common owners of Lot 31 in relation to SUB-P3. In conclusion, Mr Robinson opined that the plan direction was that amenity should be maintained, therefore the proposal did not achieve consistency with the objectives and policies of the PODP.
- [108] In evidence for the initial hearing, Mr Rendall generally concurred with Mr Robinson’s assessment, but with contrary opinions to matters I set out as exceptions in the paragraph above. In line with his effects assessment as to amenity, Mr Rendall considered the application consistent with the plan policies and relying on Ms Franklin’s assessment, the proposal was consistent with SUB-P3 (1) and (2)⁵⁴. For the second hearing, Mr Rendall provided a more detailed response as to the differences between his and Mr Robinson’s plan assessments, particularly as to SUB-P15 and RPROZ – O4 and O5, and expressing the view that the scale of proposal would not reduce amenity in any meaningful way and there nothing in the specific clauses of RPROZ -O4 referring to an overarching direction.
- [109] I tested the evidence of both Mr Robinson and Mr Rendall at the hearings through questioning as to the district plan’s objectives and policies.
- [110] I accept the objectives and policies of the PODP relevant to the proposal as collectively identified by the planning witnesses. Noting my earlier findings as to amenity effects, their scale and significance, I am not persuaded by Mr Robinson’s, singular focus as to “amenity” within the objectives and policies to draw the conclusion that the proposal is inconsistent with the district plan. Again, noting my findings as to the effects assessment above, it follows that I also find the proposal, subject to appropriate conditions, consistent with the objectives and policies of the PODP.

Section 104(c) Any other matter

- [111] Both Mr Robinson⁵⁵ and Mr Rendall⁵⁶ agreed that the Taiao, Taiora, the Iwi Environmental Management Plan of Taranaki Iwi was an applicable consideration as to the proposal, with Mr Robinson noting correspondence from Ngāti Tāiri hapū that the hapū held no concerns with the proposed development. I heard nothing to the contrary so adopt those agreed assessments.

⁵³ Section 42A Report, Mr C Robinson, 10 September 2025, Paras 80 - 82 and Section 42A Report, Mr C Robinson, 22 May 2026, Paras 76- 92

⁵⁴ EIC, Mr C Rendall, 17 September 2025 , Paras 65 – 69

⁵⁵ Section 42A Report, Mr C Robinson, 10 September 2025, Paras 83 – 85 and Section 42A Report, Mr C Robinson, 22 May 2026, Paras 93 - 94

⁵⁶ EIC, Mr C Rendall, 17 September 2025, Para 70

Section 106

- [112] Ms Franklin's⁵⁷ view was that existing Lot 20 following the boundary adjustment would not be subject to any known significant natural hazards and the residual risk of land instability to Lot 31 would not be unacceptable. Mr Rendall⁵⁸ and Mr Robinson⁵⁹ were of a similar view that there was no reason to decline the application under Section 106 of the RMA. Hearing no specific evidence to the contrary, I adopt that evidence.

Conditions Section 108, Section 108AA, Section 220 and Section 221

- [113] Various suites of conditions and varied consent notices were included the Section 42A Report⁶⁰ and commented on in planning evidence⁶¹ filed. In addition, three JWS⁶² addressing conditions and amended consent notices were also filed. Further, during the hearing of 16 June 2026, I empanelled the planners, Mr Robinson and Mr Rendall questioning them on the recommended conditions and consent notices. As noted above, the submitters did not comment on the recommended conditions and consent notices in the final JWS of 23 June 2026, whereas the Applicant endorsed that suite of conditions and consent notices⁶³.
- [114] I wish to thank Mr Robinson and Mr Rendall for time and effort in improving the consistency and effectiveness of the conditions and consent notices. The conditions and consent notices generally align with my findings. I have made some minor amendments. The wording of the varied consent notices and conditions to be imposed are annexed in **Appendix 3**).

PART 2 – RMA

- [115] These applications are to be considered under Section 104 of the RMA, which sets out the matters that consent authorities shall have regard to when considering resource consent applications.
- [116] In the decision (RJ Davidson Family Trust v Marlborough District Council [2018] NZCA 316), the Court of Appeal reconfirmed the pre-eminence of Part 2 matters in the consideration of resource consents. The Court however found that in those instances where it is clear that a planning document has been competently prepared having regard to Part 2 and contains a coherent set of policies leading toward clear environmental outcomes, consideration of Part 2 is unlikely to assist evaluation of a proposal. Conversely, where a plan has not been prepared in a manner which appropriately reflects Part 2, or the objectives and policies are pulling in different directions, consideration of Part 2 is both appropriate and necessary.
- [117] Mr Robinson's view as to the subdivision and land use applications was, in summary, that while he considered the PODP to have robustly prepared, given not all the landowners were willing participants in the subdivision application, an assessment of Part 2 would enhance the evaluation of the proposal. That evaluation, again in

⁵⁷ EIC, Ms K Franklin, 17 September 2026, Paras 39 - 41

⁵⁸ EIC, Mr C Rendall, 17 September 2025, Para 71

⁵⁹ Section 42A Report, Mr C Robinson, 10 Sept 2025, Para 85 and Section 42A Report, Mr C Robinson, 22 May 2026, Para 95

⁶⁰ Section 42A Report, Mr C Robinson, 17 September 2025, Appendix 1 and Section 42A Report, Mr C Robinson, 22 May 2026, Appendix 1

⁶¹ EIC, Mr C Rendall, 17 September 2026, Para 75-76 and EIC, Mr C Rendall, 29 May 2026, Paras 58 - 61

⁶² Joint Witness Statements, 7 November 2025, 12 June 2026, and 23 June 2026

⁶³ Reply Statement, Mr A Young, 7 July 2026, Para 56

summary, was that the proposal; was clearly inconsistent with section 7(c) as to the maintenance and enhancement of amenity values, consistent with sections 6 and 8, but overall inconsistent with Part 2⁶⁴. As to the s221 application Mr Robinson considered no further analysis above that which he had already provided for the subdivision and land use applications as was required⁶⁵.

- [118] Mr Rendall, had a differing view to that of Mr Robinson, opining that the PODP was adequately prepared and that reversion to Part 2 was not required. Nonetheless, Mr Rendall undertook his own assessment of sections 6, and 7 of the RMA⁶⁶ concluding that the proposal was consistent with Part 2. Mr Rendall's did not see the "interests in land" as adverse effects. Finally, Mr Rendall remained of the same view as to the s221 of the RMA hearing.⁶⁷ No other evidence directly assessing Part 2 of the RMA was placed before me.
- [119] In his legal submissions for the initial hearing, Mr Young, noting the Davidson case, submitted that recourse to Part 2 was unnecessary noting PODP has been prepared in accordance with Part 2 and that it would be inconsistent with the RMA's scheme to undermine or render ineffective the consent applications by recourse to Part 2.⁶⁸ Mr Young similarly submitted that recourse to Part 2 was not required at the section 221 of the RMA hearing.⁶⁹
- [120] In this case I find the reference to Part 2 of the RMA is not required, noting stage and status of the PODP. I do not consider that all landowners being willing participants in a subdivision application is a matter for the district plan to address, and I accept the reasoning of Mr Rendall and Mr Young.

Conclusion and Decision

Decision 1

- [121] Acting under delegated authority pursuant to Section 34A, and Sections 104, 104B and 221 of the Resource Management Act 1991, the application made Washer Family Trust Limited to amend Consent Notices 7890638.24 and 7890638.35 at 1 and 9 Washer Road being Lots 20 and Lot 31 DP 385658 (SUB24/50201.01) is **granted**.
- [122] The varied consent notices wording is in **Appendix 3**, attached to this decision.

Decision 2

- [123] Acting under delegated authority pursuant to Section 34A, and Sections 104 and 104B of the Resource Management Act 1991, the application made by Washer Family Trust Limited for a 2-lot fee simple boundary adjustment subdivision at 1 and 9 Washer Road being Lot 20 DP 385658 and Lot 31 DP 385658 (SUB24/50201), is **granted**.
- [124] The conditions applicable to this subdivision consent are in **Appendix 3**, attached to this decision.

⁶⁴ Section 42A Report, Mr C Robinson, 10 September 2025, Paras 86 - 93

⁶⁵ Section 42A Report, Mr C Robinson, 22 May 2026, Para 96

⁶⁶ EIC, Mr C Rendall, 17 September 2025, Paras 72 - 74

⁶⁷ EIC, Mr C Rendall, 29 May 2026, Para 56

⁶⁸ Legal Submissions, Mr A Young, 1 October 2025, Paras 5.1 – 5.7

⁶⁹ Legal Submissions, Mr A Young, 15 June 2026, Para 55

Decision 3

[125] Acting under delegated authority pursuant to Section 34A, and Sections 104 and 104B of the Resource Management Act 1991, the application made by Washer Family Trust Limited for land use consent for the ability to site future dwellings or structures within side yard boundary setbacks of Lot 1 hereon being a subdivision of Lot 20 DP 385658 and Lot 31 DP 385658 (LUC24/50201), is **granted**.

[126] The conditions applicable to this land use consent are in **Appendix 3**, attached to this decision.

[127] These decisions are made for the reasons discussed throughout and, in summary, because:

- The activity that is **granted** is consistent with the purpose and principles of the Resource Management Act 1991;
- The activity that is **granted** is consistent with the provisions of the partially operative New Plymouth District Plan; and
- The activity that is **granted** is unlikely to have adverse effects on the environment.

DATED this 4th day of August 2026



Mark St.Clair (Independent Commissioner)

Appendix 1 – Minutes – First hearing

Appendix 2 – Minutes – Second Hearing

Appendix 3 – Varied Consent Notice wording and Conditions

Appendix 4 – Revised Scheme Plan