

**BEFORE AN INDEPENDENT COMMISSIONER APPOINTED
BY THE NEW PLYMOUTH DISTRICT COUNCIL**

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

AND

IN THE MATTER an application under s221(3) of the RMA to vary
a consent notice condition applying to the
property at 263 Weld Road Lower, Oakura

CLOSING LEGAL SUBMISSIONS ON BEHALF OF THE APPLICANTS

31 July 2025

INTRODUCTION AND SUMMARY

1. In opening submissions at the hearing, I submitted that:
 - (a) the Commissioner's assessment of the application (the "Proposal") requires a pragmatic weighing of the evidence presented; and
 - (b) if the Proposal is declined, Mr and Mrs Fourie (the "Applicants") will not be able to live in their family home – this would be a disproportionate outcome in the context of the Application, including its limited adverse impacts.
2. I outlined that the application is supported by rigorous independent expert assessment which demonstrates that adverse effects will be acceptable, and that the Proposal is consistent with the applicable planning framework.
3. In oral remarks in opening the Applicants' case I also observed:
 - (a) The application is required simply to vary a single consent notice condition to move the prescribed location for a habitable dwelling on the property. No other authorisations are needed: the Proposal – and the existing building bulk and location onsite – are permitted under the planning framework, and no other existing consent notice conditions are proposed to be removed or amended.¹
 - (b) The application was originally for a proposed Area A of approximately 500m². This was later amended by the Applicants to a reduced 216m² area corresponding with the existing northern building onsite. The proposed Area A is materially smaller than the approximately 2,800m² Area Z provided for in the existing consent notice. This materially constrains the size of any dwelling within Area A, compared to what is currently provided for in Area Z.
4. My principal submission in opening the case for the Applicants was that the Proposal should be granted, subject to conditions, because:
 - (a) the evidence demonstrates that the Proposal has been comprehensively considered and addressed by the Applicants and their independent experts, including that any adverse effects will be acceptable in the context of the planning framework; and

¹ As outlined below, additional consent notice conditions, and other conditions of consent, have been proposed by the Applicants through the application process.

(b) the Proposal satisfies the requirements of the RMA, including s221, s104, and s104B.

5. As I stated in oral closing remarks at the hearing, nothing transpired during the hearing that has changed or detracted from the principal submission I made in opening the Applicants' case. As outlined in my opening submissions,² some matters raised by submitters are legitimate RMA issues, for example regarding the effects of the Proposal. Many others are not relevant to the application or are entirely without merit. Many issues raised were purported personal grievances that serve only to evidence a breakdown in neighbourly relations; or were concerns with Council processes that are not directly relevant to the application. The Applicants' case has consistently focussed on the pertinent RMA issues.
6. There is agreement from all parties that visual/landscape effects are the key potential effects.³ All of the Applicant and Council experts, including the visual/landscape experts, consider that the Proposal's adverse effects will be (at worst) minor, and will be acceptable in the context of the applicable planning framework. The submitters provided no expert visual/landscape evidence countering the closely aligned evidence of the Applicants' and Council experts. After hearing the submissions and evidence, Ms Manning for the Council reaffirmed her recommendation that the Proposal be approved, subject to conditions.⁴
7. The evidence demonstrated the genuine, concerted, efforts by the Applicants to address submitters' concerns through proposed conditions. This has continued beyond the adjournment of the hearing, notwithstanding that the expert evidence for the Applicants has consistently been that the Proposal's impacts will be acceptable without additional conditions/restrictions. I address conditions further below.
8. All relevant matters arising at the hearing were canvassed in opening legal submissions. I do not repeat those here. These closing submissions therefore only address certain matters arising from the hearing, largely by way of clarification.

LEGAL FRAMEWORK

9. The applicable legal framework was outlined in detail in opening submissions.⁵ At the hearing, there was agreement by all parties that s221 of the RMA enables owners to

² Opening submissions at [15]-[17].

³ Ms Hooper SOE at [90].

⁴ Refer also to the Summary Statement of Jacqui Manning, 14 July 2025.

⁵ Opening submissions at [18]-[52].

apply to vary or cancel consent notice conditions and that the normal RMA decision-making process for resource consents applies to the application. For applications under s221(3) of the RMA, s104 applies and the decision-maker must have regard to the effects on the environment and to the relevant planning documents.⁶

10. I outlined in opening submissions that the application and evidence addresses the relevant matters raised in the case law; and that the Proposal is consistent with those matters, including those decisions referred to in Ms Hooper's evidence. This is notwithstanding that the various matters identified in previous decisions constitute potentially relevant considerations, as opposed to universally applicable individual threshold tests.⁷
11. For the avoidance of doubt, the fact that written approvals were provided by neighbours with respect to the original subdivision application is no impediment to granting the current application. Section 221(3) of the RMA explicitly enables owners to apply to vary or cancel consent notice conditions, regardless of the circumstances in which they arose. Further, neighbours were notified of the application and have taken up the opportunity to be involved by attending the hearing and presenting submissions/evidence.

Potential adverse effects

12. I submit that the Commissioner should not lose sight of the fact that the combined view of all the Applicants' and Council's experts is that:
 - (a) landscape and visual effects are the principal effects at issue; and
 - (b) any adverse effects of the Proposal will be (at worst) minor and – as outlined further below – will be acceptable in the context of the planning framework.⁸
13. Those experts are closely aligned: the Applicants' experts consider that adverse effects, including on neighbours, will be (at worst) **less than minor**; while the Council's experts consider they will be (at worst) **minor**. At the hearing, neither the Applicants' nor the Council's experts resiled from their conclusions with respect to adverse effects. All visual/landscape independent expert evidence before the Commissioner is that adverse effects will be minor and acceptable.

⁶ Opening submissions at [18]-[22].

⁷ Opening submissions at [24]-[31]. At the hearing, Ms Hooper agreed that comments in previous decisions should not be elevated to strict rules or threshold tests.

⁸ With proposed conditions, in the case of Ms Manning.

14. Ms Hooper's assertions regarding visual/landscape adverse effects being "significant" were not supported by any expert landscape/visual assessment. As outlined in opening submissions:
- (a) Ms Hooper's assessment of effects was, with respect, difficult to follow, including because it was influenced by her incorrect interpretation of the applicable decision-making framework, namely her novel and unfounded assertion that the Proposal must be demonstrated to be "better" than the *status quo*.⁹
 - (b) Without belittling genuinely held views of submitters, in my submission the submitters' and Ms Hooper's concerns regarding adverse effects are overstated, and the independent expert evidence of Mr Bain and Mr Dobson should be preferred.

No requirement for effects to be "minor"

15. The applicable legal framework, principally s104 of the RMA, is outlined briefly above and in detail in opening submissions. For the avoidance of any doubt, there is no requirement under the applicable legal framework for the Proposal's adverse effects to be "minor".¹⁰
16. The Applicants' and Council experts recognise there will be some adverse effects on neighbours, even though, for some neighbours, Mr Bain's evidence is that effects will be positive compared to a dwelling in the consented "Area Z". While the Applicants' and Council experts agree that effects will be no more than minor, there is no *requirement* for this to be the case for consent to be granted.¹¹ Section 104 of the RMA requires the Commissioner to decide whether effects are acceptable, including in the context of the applicable planning framework.

⁹ Opening submissions at [20]-[22] and [38]. A common theme purported by Ms Hooper in written evidence and at the hearing was that the Proposal must be demonstrated to be "better" than the *status quo*. At the hearing, Ms Hooper sought to explain how her "better than or equal to" "test" "*came into [her] pattern of thinking*". As submitted in opening, there is simply no basis for such an assessment.

¹⁰ This matter featured briefly at the hearing, in questioning from the Commissioner to Ms Manning. For completeness, the reference in opening submissions at [22] to an excerpt from *Green v Auckland Council* [2013] NZHC 2364 at [123] which referred to whether adverse effects in that case would be "minor or more than minor" did not establish any requirement for relevant effects to be minor, and was in the context of the notification decision and related "tests" in that case. As outlined in opening submissions, *Green* was a judicial review decision concerning consents granted on a non-notified basis to move a prescribed building platform (i.e. similar facts as the current application).

¹¹ An application under s221(3) can still be granted where adverse effects will be more than minor. In response to questions from the Commissioner, Ms Carvill confirmed her view that the Proposal would still be acceptable even if adverse effects were found to be greater than those assessed by Mr Bain. The scenario addressed by Ms Carvill was if adverse effects were found to be minor, as opposed to less than minor as concluded by Mr Bain.

Cumulative effects

17. Experts for the Applicants and the Council confirmed that all relevant effects, including cumulative effects, had been taken into account by them; and that the Proposal would not result in any unacceptable cumulative effects.

Planning framework

18. Ms Carvill and Ms Manning agree that the Proposal is consistent with the relevant planning framework, including the Proposed New Plymouth District Plan and the Taranaki Regional Policy Statement ("RPS").¹² This is not surprising. The Proposed Plan Rural Production Zone provisions recognise that rural dwellings are part of the rural experience throughout the district.¹³ Indeed, the Proposal would be a permitted activity under the Proposed Plan.
19. Against that context, Ms Hooper's conclusion that the Proposal is inconsistent with the RPS and the Proposed Plan does not bear scrutiny, and in my submission Ms Hooper did not offer any compelling justification for this conclusion at the hearing.
20. I agree with Ms Carvill that because the application is not a subdivision, the subdivision objectives and policies in the Proposed Plan are not strictly applicable.¹⁴ In any event, Ms Carvill and Ms Manning's evidence confirms that the Proposal is consistent with the subdivision objectives and policies: the Proposal is therefore appropriate with or without reference to the subdivision objectives and policies.¹⁵ Ms Carvill also confirmed that whether or not the Proposed Plan subdivision provisions are more stringent now than at the time of the original subdivision, which was a peripheral matter of contention at the hearing, her conclusions on the Proposal's consistency with the planning framework would remain unchanged.¹⁶
21. I submit that the Commissioner should prefer the evidence of Ms Carvill and Ms Manning regarding consistency with the planning framework.

¹² See for example Ms Carvill's SOE at [43]-[47]; and the s42A Report at [4.15] and [4.34].

¹³ See for example Ms Carvill's SOE at [22] and [35]. As Mr Dobson confirmed in response to a question from the Commissioner regarding Ms Hooper's conclusions on the planning framework, a shed may be more "rural" than a dwelling, but a dwelling is not "non-rural".

¹⁴ Ms Carvill SOE, footnote 12.

¹⁵ Ms Carvill confirmed in response to questions from the Commissioner that the applicability or otherwise of the subdivision objectives or policies was not material to her conclusions on the Proposal's consistency with the planning framework.

¹⁶ Refer to [8]-[12] of Ms Carvill's supplementary statement. Ms Hooper accepted orally at the hearing that her assertion in her statement of evidence that, if the original subdivision was applied for today, it would be unlikely to be granted, was purely speculative.

Precedent and plan integrity

22. Granting the application would not create any precedent or plan integrity effect of concern. The granting of an application has no precedent effect in the strict sense.¹⁷ Each case is to be considered on its own merits, and its own particular context which will vary from case to case.¹⁸
23. *Drach v Tasman District Council*,¹⁹ cited in opening submissions, involved an applicant seeking to delete under s221 of the RMA a consent notice preventing further subdivision. The Court approved deletion of the consent notice, in the face of opposition from nearby residents. With respect to precedent, the Court found:²⁰
- ...nor do we find any force in the... claim that cancellation of [the relevant consent notice condition] would give rise to adverse precedent. Rather, its cancellation is to enable a Proposal that satisfies the case for consent, in accordance with the [plan's] intentions for the [relevant zone].*
24. With respect to plan integrity, s221(3) of the RMA expressly provides a mechanism to vary consent notice conditions, and Ms Carvill's evidence is that the Proposal is wholly consistent with the objectives and policies of the Rural Production Zone. No plan integrity or other RMA "integrity" issues arise in the context of the Proposal.
25. Including for the reasons outlined in opening submissions and in evidence at the hearing, submitters' concerns as to precedent effect and plan/RMA integrity issues are misconstrued and/or overstated. There is no sound evidentiary basis for such concerns.

Retrospectivity

26. At the hearing, Ms Hooper confirmed there was no dispute regarding the legal framework and associated approach with respect to retrospectivity, which I outlined in opening submissions.²¹

¹⁷ *Dye v Auckland Regional Council* [2002] 1 NZLR 337, (2001) 7 ELRNZ 209, [2001] 11 NZRMA 513 (CA) at [32].

¹⁸ *Endsleigh Cottages Ltd v Hastings District Council* [2020] NZEnvC 64 at [181]-[182] and *Beacham v Hastings District Council*, ENC Wellington W075/09, 5 October 2009 at [24]. See also *Monowai Properties Limited v Rodney District Council* ENC Wellington A215/03, 12 December 2003 [2003] ELHNZ 512 at [24], where the Court commented that it was not accurate or even helpful to speak of precedent "effect".

¹⁹ [2021] NZEnvC 118.

²⁰ [2021] NZEnvC 118 at [25].

²¹ Opening submissions at [49]-[52].

SUBMITTER EXPERT EVIDENCE

27. In opening submissions I outlined a range of strong/absolute statements in Ms Hooper's statement of evidence, including regarding the conduct and knowledge of the Applicants.²² I submitted that those statements crossed over into advocacy, as opposed to expert opinion; and that Ms Hooper's evidence exhibited an approach beginning with the premise that the Proposal is inappropriate, and then backfilling from this presupposition.²³ In answering questions from the Commissioner, it was apparent that Ms Hooper felt strongly about the issues.²⁴ At times she was essentially advocating for the submitters. Such advocacy is inconsistent with role of an independent expert witness, and in my submission mean the Commissioner should afford Ms Hooper's evidence little weight.²⁵
28. A focus of Ms Hooper's written and oral evidence was an assertion that the application is somehow improper because it amounts to revisiting the merits of the original subdivision decision; or that approving the application would compromise the original decision and other subdivision decisions and associated consent notices in the District. Such concerns are both unfounded and misplaced. The current application is not about relitigating the original subdivision decision. It is not a subdivision application. It is an application to change a consent notice condition, relating to a property created by the original subdivision, to reposition (and reduce the size of) the prescribed dwelling platform. The RMA provides for an application of this nature,²⁶ which must be assessed on its merits. Granting the application would not in any way improperly compromise the original subdivision decision – or other subdivision decisions.

CONDITIONS

29. The consistent evidence of Mr Bain and Ms Carvill has been that the effects of the Proposal are acceptable without the additional controls proposed by Ms Manning or Ms Hooper at various stages. Notwithstanding, at each stage the Applicants have

²² Opening submissions at [54].

²³ Opening submissions at [55]-[56].

²⁴ At one point, Ms Hooper said she was worried about any decision to grant this application being "thrown back at her" in her professional capacity as a planner.

²⁵ In opening submissions at footnote 90 I referred to an example of a decision in which expert evidence has been given reduced weight due to issues of advocacy/lack of independence: *Blueskin Energy Ltd v Dunedin City Council* [2017] NZEnvC 150. The Court found: "When an expert appears to take the position of an advocate this compromises the evidence they give. Given the strength of her views in the submission we are unable to give Dr Stephenson's evidence much weight, and this is so despite her assurances that her views did not taint the opinions expressed in evidence." (Paragraph 203 of the decision (footnote 167)).

²⁶ Section 221(3).

been willing to accept a range of conditions proposed by the submitters and Council. This includes both additional consent notice conditions, and conditions attaching to the resource consent sought.

30. Matters relating to conditions were traversed in some detail at the hearing, and the Applicants and their independent expert advisors have carefully reviewed the latest set of conditions proposed by Ms Manning and Ms Hooper.²⁷ The Applicants thank the Commissioner for affording time to further develop conditions. The Applicants also thank Ms Manning and Ms Hooper for their input into conditions. The iterative process adopted has facilitated the progressive narrowing of outstanding issues.
31. In a genuine effort to meaningfully address neighbours' concerns, the Applicants are prepared to accept many of the latest conditions proposed by Ms Manning and Ms Hooper, including landscaping requirements and building restrictions at the property. There is therefore a high degree of alignment between the parties regarding proposed conditions, in the event the application is granted.
32. The latest set of conditions proposed by the Applicants, with input from Ms Carvill and Mr Bain, is set out in **Annexure A**.²⁸ Ms Carvill has prepared a document consolidating responses from the planners and the final conditions proposed by the Applicants (see **Annexure B**).²⁹
33. As outlined in **Annexure A**, the Applicants' proposed amendments to the conditions of consent notice 12565106.1 include:³⁰
 - (a) Changing the first consent notice condition to reference the proposed prescribed dwelling footprint Area A, as opposed to the current Area Z (being the primary purpose of the current application).³¹
 - (b) Additional consent notice conditions/controls establishing:

²⁷ Condition sets circulated after the hearing on 18 August 2025.

²⁸ Condition numbering has been updated/clarified.

²⁹ To the extent there are differences between Annexure A and Annexure B, Annexure A is intended to prevail.

³⁰ Labelled "a"- "f" in Annexure A. These changes to the conditions of consent notice 12565106.1 would be a function of a decision granting the application on the basis sought, and should be expressed as such in any decision granting consent.

³¹ "a" in Annexure A.

- (i) Additional clarity that a minor residential unit (as defined) would constitute a second habitable dwelling of the nature prohibited by the consent notice.³²
- (ii) Restrictions on any dwelling within proposed Area A, including with respect to: glazing; the height of balconies and decks; living area window orientation and screening; and the location of any decks, pools, spas or barbecue areas.³³
- (iii) A prohibition on additional buildings or structures of any type or size proximate to the western boundary of the property, which is an area of concern to neighbours. Ms Hooper and Ms Manning confirmed at the hearing that prohibiting buildings within 30m of the western boundary was appropriate in their opinion, as opposed to the 50m originally sought by the submitters. The Applicants have proposed 28m in the area to the south of the northernmost point of Area A (to avoid implicating existing buildings onsite), and 15m elsewhere along the western boundary. The different restrictions generally spatially align with the embankment onsite and reflect the nature of the property and its relationship with neighbouring sites.³⁴ For completeness, neither Mr Bain nor Ms Carvill consider such restrictions necessary to manage effects.

34. Proposed conditions of the resource consent sought (SUB22/48035.03) include:³⁵

- (a) A process for the preparation, certification, and implementation of a Detailed Landscape Plan (DLP) addressing effects on neighbouring properties and requiring the following (in summary):
 - (i) Engagement with neighbours on the draft DLP.
 - (ii) Establishment and retention of two significant areas of planting in the form of double rows of mixed native evergreens in key locations to the west of proposed Area A. Ms Hooper and Mr Dobson confirmed their general agreement to the “double row of mixed native evergreens” requirement, as opposed to the significantly greater extent of planting (25m wide)

³² “a” in Annexure A.

³³ “b”, “c”, “d”, and “e” in Annexure A.

³⁴ “f” in Annexure A. The Proposed Plan structure “setback” requirements for side boundaries in the Rural Production Zone are generally 10m for agricultural, pastoral, and horticultural activity structures; and 15m for other general structures. See RPROZ-S2.

³⁵ Numbered “1”-“4” in Annexure A.

originally supported by the submitters. Where adjacent to 247B Weld Road Lower the proposed conditions require the species selected for planting to be species that typically do not grow higher than approximately 5m, which was a proposal addressed at the hearing, including in questions from the Commissioner to Mr Dobson.

- (iii) Retention of the existing broadleaf hedge to the east of Area A.
 - (iv) Ensuring that planting within covenant “Area Y” on the record of title is consistent with the covenant.³⁶
 - (v) Rigorous maintenance obligations for a minimum period of 36 months, and ongoing obligations to replace damaged or dead plants.
- (b) Confirmation that costs associated with the registration of the consent notice condition amendments authorised by SUB22/48035.03 shall be met by the consent holder.³⁷
35. While the conditions proposed in **Annexure A** go “above and beyond” what is required to manage effects, the Applicant accepts they are appropriate and proportionate in the context of the application and the submitters’ concerns.
36. In contrast, I submit that some of the conditions proposed by the submitters (and, to a lesser extent, the Council) are disproportionate, inappropriate, and unjustified. Some conditions proposed by submitters simply do not relate to any adverse effect associated with the Proposal, cannot lawfully be imposed by the Commissioner,³⁸ and are not supported by either the Council or the Applicants. This includes the submitters’ proposed conditions requiring (in summary) a broad “no complaints” covenant be entered into in favour of the neighbours, and that the Property not be used as a horse arena.³⁹ Mr Dobson was frank at the hearing that some of the proposed conditions he supports were about “opportunities” for design and “creative” thinking, as opposed to directly relating to managing the effects of the current Proposal.
37. Submitters and the Council seek that conditions of consent for the current Proposal require the removal of the row of existing poplars along the western/southwestern boundary of the Property. The Applicants do not consider the removal of the existing

³⁶ The Applicants do not accept there is currently any planting that is inconsistent with the covenant.

³⁷ Annexure A relocates this condition from the conditions versions previously circulated.

³⁸ Refer s108AA(1)(b)(i).

³⁹ The submitters seek a condition requiring the registration of a sweeping no complaints covenant on the record of title to the Property; and that the Property not be used for Sport and Recreation Activities.

poplars onsite is justified and are not proposing conditions to this effect. The poplar trees were lawfully planted as a permitted activity and serve shelter belt and amenity purposes.⁴⁰ Mr Bain's evidence is that removing the poplars is not justified from a visual/landscape perspective, including because they provide shelter, visual scale, and enable winter sunlight. Mr Bain's opinion is that, supplemented with additional native vegetation (as per the consent conditions proposed by the Applicants) the poplars will achieve the outcomes sought by Mr Dobson and maintain the vegetative framework established by the Applicants.⁴¹

PRINCIPAL SUBMISSION

38. I reiterate the principal submission on behalf of the Applicants that the Proposal is deserving of being granted, subject to the conditions sought by the Applicants in **Annexure A**, because:

- (a) the evidence demonstrates that any adverse effects of the Proposal will be acceptable in the context of the planning framework; and
- (b) the Proposal satisfies the requirements of the RMA including s221, s104, and s104B.

Dated this 31st day of July 2025



SJ Mutch

Counsel for Sophie and Heinrich Fourie

⁴⁰ The Applicants do not accept there are any Proposed Plan non-compliances associated with the planting of the poplars, including given the timing of the planting (refer Mr Bain's statement of evidence at [41]).

⁴¹ Mr Bain statement of evidence at [44]-[45].

ANNEXURE A

PROPOSED CONDITIONS – APPLICANT

Consent Notice 12565106.1 shall be varied to read:

- a. A maximum of one habitable dwelling shall be permitted on Lot 2 LT 582431. This building shall be located within the Area marked 'Z' 'A' on Lot 2 LT 582431 as shown on the Site Plan by BTW Company, Drawing No. 230274-SU-01, Sheet 1, Rev B2. The habitable building shall not be erected outside of the Area marked 'Z' 'A' on Lot 4 2 LT 582431.

For the avoidance of doubt, a Minor Residential Unit* would be considered a second habitable dwelling and is not permitted.

* **Minor Residential Unit** means a self-contained residential unit that is ancillary to the principal residential unit and is held in common ownership with the principal residential unit on the same site and includes a granny flat.

- b. Any glazing shall be obscured glass* within the walls of the habitable dwelling where positioned 2.4 metres or more above ground level at the time the consent notice was originally registered on the Record of Title for Lot 2 DP 582431.

* **Obscured glass** means glass that has been treated, patterned, textured, frosted, etched, sandblasted, or otherwise manufactured so that it limits visibility through the glass from one side to the other, while still permitting the passage of natural light. The obscuration must be sufficient to prevent clear views through the glass in both directions, typically to a minimum of Level 3 obscuration on the Pilkington scale or an equivalent standard).

- c. No balconies or decks (in either case, more than 300mm above ground level existing at the date of registration of this consent notice) shall be established on the habitable dwelling or other structure within Lot 2 DP 582431.

- d. Windows associated with any living areas (including any living room, lounge, dining room or dining area, library, or similar space for general living purposes) within the habitable dwelling shall be:

- i. Oriented to the north; and/or
- ii. Oriented to the east and screened with a physical barrier (such as a trellis or similar structure) located adjacent to the window and positioned no more than 3.5 metres from the window of any living area on the habitable dwelling. The screening shall extend at least 1 metre to each side of the glassed area of the window or to the edge of the building (whichever is the lesser). The screening shall be from the ground level up to at least level with the top of the glazed extent of the window.

- e. No decks, pools, spas, or barbeque areas shall be located on the extent of Lot 2 DP 582431 extending from the western elevation of the dwelling to the site boundary.

- f. South of the northernmost point of Area A, no additional buildings or structures of any type or size may be built within 28 metres of the western boundary of the site. North of the northernmost point of Area A, no additional buildings or structures of any type or size may be built within 15 metres of the western boundary of the site.

[Remaining consent notice conditions to remain unchanged]

Resource consent SUB22/48035.03 shall be subject to the following conditions:

1. No later than 30 working days* from the date of commencement of this consent, the Consent Holder must submit a Detailed Landscape Plan (DLP) prepared by a landscape architect, or other suitably qualified and experienced person, to Council's Monitoring and Enforcement Officer for written certification in accordance with the information requirements set out in Condition 2.

The purpose of the DLP is to create a visual representation of the landscape for the site that addresses viewshafts, privacy, light, and noise mitigation in respect of adjoining properties.

- a. Where Council is unable to certify the DLP on the basis that the information requirements in Condition 2 have not been met, the Consent Holder shall submit a revised DLP for certification.
- b. Any change(s) to the certified DLP must be submitted to Council's Monitoring and Enforcement Officer for certification in accordance with Conditions 1 and 2(e).
 - i. Any change(s) to the DLP shall not be undertaken until certification of the change(s) by Council has occurred in writing.
 - ii. Condition 3 applies post certification of amendments.

* **Working days** as defined within the Resource Management Act 1991

Advice Notes

- *The process related to certification in respect of Condition 1 will occur in consultation with and on advisement by Council's Landscape and Urban Design Advisor at the Consent Holder's cost.*
- *Council will either certify or refuse to certify the DLP within 10 working days of receipt based on the parameters contained within Condition 2.*
- *Should Council refuse to certify the DLP then the Compliance and Monitoring Enforcement Officer will provide in writing an outline as to why certification is refused based on the parameters contained within Condition 2.*
- *Provided that the information requirements within Condition 2 are addressed in the DLP, certification will not be withheld.*

2. The DLP required by Condition 1 must provide for the following to achieve its purpose:
 - a. Landscape elements within the site relating to the following:
 - i. Western / southwestern site boundary facing Lot 2 DP 432478 (247B Weld Road Lower):
 - A double row of mixed native evergreen planting within 3 m of the existing Poplar shelterbelt at the top of the embankment for the extent of the built form of both the dwelling within Area A (as shown on the Site Plan by BTW Company, Drawing No. 230274-SU-01, Sheet 1, Rev B2) and ancillary buildings.
 - The species selected for the double row of mixed evergreen planting shall be species that typically do not grow higher than approximately 5 m in height.
 - ii. Western / southwestern site boundary adjoining Lot 1 DP 432478 (263 Weld Road Lower):
 - A double row of mixed native evergreen planting within 3 m of the existing Poplar shelterbelt, for the length of the common boundary from the northern end of the existing Poplar shelterbelt to where it meets the planting required in Condition 2(a)(i).
 - The planting shall be located clear of the water easement running parallel to the boundary line such that the integrity of the easement remains unaffected.
 - iii. Eastern side of Area A and habitable building and associated outdoor living area (within the proximity of the existing broadleaf hedge):
 - The existing broadleaf hedge (or similar) is retained.
 - iv. Extent of site contained within Land Covenant Area Y on DP 582431:

- Removal of any existing planting that is not consistent with the land covenant and replacement with species consistent with the land covenant.
 - b. The species, location, spacing, size (at time of planting), and quantity of all plants to be physically installed, with a particular focus of appropriateness of species for survival for their location.
 - c. A full schedule of all plants to be physically installed including botanical name, common name, planter bag size, and quantities.
 - d. A detailed landscape maintenance plan describing all maintenance tasks to be undertaken, including:
 - i. Maintenance per calendar month for a minimum period of 36 months during the establishment of the landscape planting. Maintenance tasks during establishment shall include watering, feeding, mulching, re-staking, and pest and disease management and control of all plant pests and wild sown species.
 - ii. The minimum height for pruning of the existing broadleaf hedge of 2.5 metres.
 - iii. On an ongoing and regular basis thereafter replacement of damaged and dead plants.
 - e. Evidence that the draft DLP has been provided to the owners and occupiers of the following neighbouring properties for feedback and comment, including a record of feedback received from these parties and the changes (if any) made to the DLP in response to the feedback:
 - i. 271 Weld Road Lower (Lot 3 DP 582431),
 - ii. 263 Weld Road Lower (Lot 1 DP 432478),
 - iii. 247C Weld Road Lower (Lot 1 DP 500285),
 - iv. 247B Weld Road Lower (Lot 2 DP 432478), and
 - v. 255 Weld Road Lower (Lot 1 DP 484251).
3. Within 3 months from the date of certification of the DLP, the Consent Holder must establish all planting on the site in accordance with the certified DLP.
- a. The landscaping shall be retained and maintained in accordance with the certified DLP.
 - b. Any plants that are removed, damaged, or fail shall be replaced at the sole expense of the Consent Holder as soon as practicable, but no later than the next planting season, in accordance with the certified DLP.
 - c. The Consent Holder shall contact Council's Monitoring and Enforcement Officer within two (2) weeks of planting being fully implemented so the initial monitoring visit can occur.

Advice Notes:

- *The plantings will be monitored by Council's Monitoring and Enforcement Officer:*
 - ~ *At the completion of the physical installation of the planting and associated works, and*
 - ~ *24 months after the planting is first installed and completed.*
 - *Additional monitoring may take place thereafter if required.*
4. All costs to register the variations to consent notice 12565106.1 authorised by SUB22/48035.03 shall be borne by the Consent Holder.

ANNEXURE B

HEARING CONDITIONS – JENNIFER CARVILL

NOTES FROM JACQUI MANNING MARK UP:

- standard text relates to the conditions recommended in the s42A report.
- **red text** relates to those changes I supported prior to the hearing sought, with modification, by the Submitters or Applicant to the recommended conditions contained within Attachment D to the s42A report.
- **blue text** relates to those changes sought by the Submitters or Applicant to the recommended conditions contained within Attachment D to the s42A report which I did not support or considered the Applicant should respond to as an Augier condition prior to the hearing.
- **green text** relates to changes to conditions raised at the hearing by Submitters or Applicant that I support.
- highlighted text relates to changes accepted by the Submitters and Applicant at the hearing that I agreed to.

NOTES FROM JENNIFER CARVILL MARK UP:

- Jacqui Manning markup used as base – no changes have been made to colour of text from the Jacqui Manning base.
- **Light grey shading** shows wording agreed by Applicant, Council's planner and Submitters.
- **Dark grey shading** shows wording agreed by Applicant and Council's planner.
- **Blue highlight** shows amendments to Jacqui Manning markup, in underline and strikethrough.

1. Consent Notice 12565106.1 shall be varied to read:

- A maximum of one habitable dwelling shall be permitted on Lot 2 LT 582431. This building shall be located within the Area marked 'A' on Lot 2 LT 582431 as shown on the Site Plan by BTW Company, Drawing No. 230274-SU-01, Sheet 1, Rev B2. The habitable building shall not be erected outside of the Area marked 'A' on Lot 2 LT 582431.*
For the avoidance of doubt, a Minor Residential Unit¹ would be considered a second habitable dwelling and is not permitted.
- Any glazing shall be obscured glass² within the walls of the habitable dwelling where positioned 2.4 metres or more above ground level at the time the consent notice was originally registered on the Record of Title for Lot 2 DP 582431.*
- No balconies or decks; (in either case, more than 300mm above ground level existing at the date of registration of this consent notice) shall be established on the habitable dwelling or other structure within Lot 2 DP 582431.*

¹ **Minor Residential Unit** means a self-contained residential unit that is ancillary to the principal residential unit and is held in common ownership with the principal residential unit on the same site and includes a Granny Flat.

² **Obscured glass** means glass that has been treated, patterned, textured, frosted, etched, sandblasted, or otherwise manufactured so that it limits visibility through the glass from one side to the other, while still permitting the passage of natural light. The obscuration must be sufficient to prevent clear views through the glass in both directions, typically to a minimum of Level 3 obscuration on the Pilkington scale or an equivalent standard)

- d. ~~Windows associated with any living areas (including any living room, lounge, dining room or dining area, library, or similar space for general living purposes) within the habitable dwelling shall be screened with a physical barrier (such as a trellis or similar structure). Such screening shall:~~
- ~~i. Oriented to the north; and/or~~
 - ~~ii. Oriented to the East and screened with a physical barrier (such as a trellis or similar structure) located adjacent to the window and positioned no more than 3.5 metres from the window of any living area on the habitable dwelling. The screening shall extend at least 1 metre to each side of the glassed area of the window or to the edge of the building (whichever is the lesser). The screening shall be from the ground level up to at least level with the top of the glazed extent of the window.~~
- e. ~~No outdoor living areas associated with the habitable dwelling (including but not limited to decks, patios, courtyards, pools, spas, or barbeque areas, and gardens) shall be located on the extent of Lot 2 DP 582431 extending from the western elevation of the dwelling to the site boundary.~~
- f. ~~South of the northernmost point of Area A, No additional buildings or structures of any type or size (including any courts or arenas for sporting or recreational activities) may be built within 50 30 28 metres of the entire western boundary of the site. North of the northernmost point of Area A, no additional buildings or structures of any type or size may be built within 15 m of the western boundary of the site.~~
- g. ~~At no time shall Lot 2 DP 582431 be used for Sport and Recreation Activities³ unless the written approval for the activity is expressly given by the owners and occupiers of the following properties:~~
- ~~i. 271 Weld Road Lower (Lot 3 DP 582431),~~
 - ~~ii. 263 Weld Road Lower (Lot 1 DP 432478),~~
 - ~~iii. 247C Weld Road Lower (Lot 1 DP 500285),~~
 - ~~iv. 247B Weld Road Lower (Lot 2 DP 432478), and~~
 - ~~v. 255 Weld Road Lower (Lot 1 DP 484251).~~

~~All costs to register the consent notice shall be borne by the Consent Holder.~~

~~[Remaining consent notice conditions to remain unchanged.]~~

2. No later than 20 30 working days⁴ from the date of grant commencement of this consent, the Consent Holder must submit a Detailed Landscape Plan (DLP) prepared by a landscape architect, or other suitably qualified and experienced person, to Council's Monitoring and Enforcement Officer for written certification in accordance with the information requirements set out in Condition 3.

The purpose of the DLP is to create a visual representation of the landscape for the site that addresses viewshafts, privacy, light, and noise mitigation in respect of adjoining properties.

³ ~~Sport and Recreation Activities~~ are defined as the use of land and buildings for organised sport, recreation activities, tournaments and sports education, e.g. parks, playgrounds, sportsgrounds, swimming pools, stadia and multi-sports facilities. It includes ancillary activities to sport and recreation activities. For the removal of doubt, this includes any horse training arena, riding school or other organized events, training or education involving equestrian activities.

⁴ ~~Working days~~ as defined within the Resource Management Act 1991

- a. Where Council is unable to certify the DLP on the basis that the information requirements in Condition 3 have not been met, the Consent Holder shall submit a revised DLP for certification.
- b. Any change(s) to the certified DLP must be submitted to Council's Monitoring and Enforcement Officer for certification in accordance with Conditions 2 and 3(e).
 - i. Any change(s) to the DLP shall not be undertaken until certification of the change(s) by Council has occurred in writing.
 - ii. Conditions 4(a) to (c) apply applies post certification of amendments, where the Consent Holder shall implement within 10 working days of certification

Advice Notes

- The process related to certification in respect of Condition 2 will occur in consultation with and on advisement by Council's Landscape and Urban Design Advisor at the Consent Holder's cost.
- Council will either certify or refuse to certify the DLP within 10 working days of receipt based on the parameters contained within Condition 3.
- Should Council refuse to certify the DLP then the Compliance and Monitoring Enforcement Officer will provide in writing an outline as to why certification is refused based on the parameters contained within Condition 3.
- Provided that the information requirements within Condition 3 are addressed in the DLP, certification will not be withheld.

3. The DLP required by Condition 2 must address provide for the following to achieve its purpose:

- a. Extent of all Landscape elements within the site including for the relating to the following:
 - i. Eastern Western / Southwestern site boundary facing Lot 2 DP 432478 (247B Weld Road Lower):
 - the Poplar shelterbelt shall be removed.
 - and replaced with a double row of mixed native evergreen planting in the vicinity of the above referenced within 3 m of the existing Poplar shelterbelt at the top of the embankment for the that extent of the built form of both the dwelling within Area A (as shown on the Site Plan by BTW Company, Drawing No. 230274-SU-01, Sheet 1, Rev B2) and ancillary buildings.
 - a 25-metre-wide native planting strip running parallel to the full length of the boundary.
 - no planting shall breach a height plane of 5 metres, measured from the existing ground level at the top of the embankment (for the avoidance of doubt, this point is to be measured at the eastern edge of the 25-metre native planting strip required in the bullet point above).
 - The species selected for the double row of mixed evergreen planting shall be species that typically do not grow higher than approximately 5 m in height.
 - ii. Western / Southwestern Eastern site boundary adjoining Lot 1 DP 432478 (263 Weld Road Lower):
 - the Poplar shelterbelt shall be removed.
 - a 25-metre-wide native planting strip running parallel for the southern 50 metres of the boundary length.
 - and replaced with in all other areas a 5-metre-wide native planting strip running parallel to the length of the boundary.
 - A double row of mixed native evergreen planning in the vicinity within 3 m of the existing Poplar shelterbelt, for the length of the common boundary from the northern end of the existing Poplar shelterbelt to where it meets the planting required in 3(a)(i).
 - the planting shall be located clear of the water easement running parallel to the boundary line such that the integrity of the easement remains unaffected.
 - iii. Eastern Western part of site adjoining Lot 3 DP 582431 (271 Weld Road Lower):

- ~~at or near boundary the Poplar planting shall be removed.~~
 - iv. ~~Eastern~~ Western side of Area A and habitable building and associated outdoor living area (within the proximity of the existing broadleaf hedge):
 - the existing broadleaf hedge (or similar) is retained.
 - ~~isolated mounding and planting or a line of clear stemmed, pleached Hornbeam trees (or similar).~~
 - v. Extent of site contained within Land Covenant Area Y on DP 582431:
 - removal of ~~any the~~ existing planting ~~that is not consistent with the land covenant~~ and replacement with species consistent with the land covenant.
 - b. The species, location, spacing, size (at time of planting), and quantity of all plants to be physically installed, with a particular focus of appropriateness of species for survival for their location.
 - c. A full schedule of all plants to be physically installed including botanical name, common name, planter bag size, and quantities.
 - d. A Detailed landscape maintenance plan ~~indicating describing~~ all maintenance tasks to be undertaken, including:
 - i. ~~Maintenance~~ Per calendar month for a minimum period of ~~24~~ 36 months ~~during the establishment of the landscape planting~~. Maintenance tasks ~~during establishment~~ shall include watering, feeding, mulching, re-staking, and pest and disease management ~~and control of all plant pests and wild sown species~~.
 - ii. ~~The minimum height for pruning of the existing broadleaf hedge of 2.5 metres.~~
 - iii. ~~On an ongoing and regular basis thereafter replacement of damaged and dead plants. Maintenance tasks during ongoing maintenance shall include mulching, re-staking, and pest and disease management, control of all plant pests and wild sown species, , trimming of vegetation to ensure that it remains of the appropriate height.~~
 - e. Evidence that the ~~draft~~ DLP has been provided to the owners and occupiers of the following neighbouring properties for feedback and comment, including a record of feedback received from these parties and the changes (if any) made to the DLP in response to the feedback:
 - i. 271 Weld Road Lower (Lot 3 DP 582431),
 - ii. 263 Weld Road Lower (Lot 1 DP 432478),
 - iii. 247C Weld Road Lower (Lot 1 DP 500285),
 - iv. 247B Weld Road Lower (Lot 2 DP 432478), and
 - v. 255 Weld Road Lower (Lot 1 DP 484251).
4. Within 3 months from the date of certification of the DLP, the Consent Holder must establish all planting on the site in accordance with the certified DLP.
- a. The landscaping shall be retained and maintained in accordance with the certified DLP.
 - b. Any plants that are removed, damaged, or fail shall be replaced at the sole expense of the Consent Holder as soon as ~~practicable possible~~, but no later than the next planting season, in accordance with the certified DLP.
 - c. The Consent Holder shall contact Council's Monitoring and Enforcement Officer within two (2) weeks of planting being fully implemented so the initial monitoring visit can occur.

Advice Notes:

- *The plantings will be monitored by Council's Monitoring and Enforcement Officer:*
 - ~ *At the completion of the physical installation of the planting and associated works, and*
 - ~ *24 months after the planting is first installed and completed.*
- *Additional monitoring may take place thereafter if required.*

5.—A no complaints covenant shall be registered against the record of title of the site preventing the Consent Holder from complaining about noise, odour, traffic, or other lawful activities occurring on any part of any of the following properties:

- i.—271 Weld Road Lower (Lot 3 DP 582431),
- ii.—263 Weld Road Lower (Lot 1 DP 432478),
- iii.—247C Weld Road Lower (Lot 1 DP 500285),
- iv.—247B Weld Road Lower (Lot 2 DP 432478), and
- v.—255 Weld Road Lower (Lot 1 DP 484251).

a.—The covenant wording shall be provided by the Consent Holder's Lawyer to the Council's Planning Lead for approval.

b.—All costs to register the covenant shall be borne by the Consent Holder.

4. All costs to register the variations to consent notice 12565106.1 authorised by SUB22/48035.03 shall be borne by the Consent Holder.