DECISION REPORT ON RESOURCE CONSENT APPLICATION SUB22/48035.03 TO NEW PLYMOUTH DISTRICT COUNCIL

HEINRICH AND SOPHIE FOURIE

263 Weld Road Lower, Ōakura

21 August 2025

TABLE OF CONTENTS

LIST OF TABLES

LIST OF APPENDICES

Appendix A: Decision Conditions

SCHEDULES

As attached in a separate document:

Schedule 1 – Summary of Evidence

OVERVIEW

Decision following the hearing of an application for resource consent under the Resource Management Act 1991 ("RMA").

This resource consent is GRANTED subject to conditions for the reasons herein.

Table 1 – Application Summary Details

Application Number:	SUB22/48035.03
Applicant:	Heinrich and Sophie Fourie
Proposal Summary:	To vary a condition specified in consent notice 2565106.1 to change the habitable dwelling location.
Site Address:	263 Weld Road Lower, Ōakura
Legal Description:	Lot 2 DP 582431 (RT 1090181)
Site Area:	4.1574 hectares
Date of Application:	26 August 2024
Relevant District Plan:	Proposed New Plymouth District Plan (Appeals Version 11, 19 August 2025)[1]
Applicable Zoning and Overlays:	Rural Production Zone Weld Road Lower – Roading hierarchy: Local Road
Relevant District Plan Provisions:	Rural Production Zone
Application Activity Status:	Discretionary Activity – pursuant to sections 221(3) and 127 of the RMA

[1] Being the current version of the District Plan at the date of this decision (with Appeals Version 10, 3 July 2025 being the current version at the time of the hearing).

Table 2 – Hearing Summary Details

Hearing Date:	15 July 2025
Independent Commissioner:	Philip McKay
Appearances for Applicant:	Steve Mutch – Legal Counsel Richard Bain – Landscape & Visual Effects Jennifer Carvill – Planning
Appearances for Submitters:	Kathryn Hooper – Planning Nicolas Hackling – Submitter on behalf of himself and Abigail Hackling Rebecca Shaw – Submitter on behalf of herself and Leanne Shaw Greg Sheffield – Submitter on behalf of himself and Katy Sheffield
Appearances for New Plymouth District Council:	Brad Dobson – Landscape & Visual Effects Jacqui Manning – Planning (Section 42A Reporting Officer) Julie Straka (Manager Governance) – Hearings Administrator
Commissioner's Site Visit:	Undertaken on 14 July 2025 (prior to hearing) including visiting the subject site and the properties of all five submitters.
Hearing Closed:	1 August 2025

1. INTRODUCTION

1.1 DELEGATION

1. This decision is made on behalf of the New Plymouth District Council ("Council" or "NPDC") by an independent hearing commissioner, Philip McKay,[2] appointed under section 34A of the Resource Management Act 1991 ("RMA") to hear and decide this application.

1.2 PROCEDURAL MATTERS

2. The resource consent application by Heinrich and Sophie Fourie ("the Applicant") was limited notified to the respective owners of ten properties either adjoining or within proximity of the Applicant's site.[3]

3. Five submissions in opposition were subsequently received from the following:

    - Greg & Katy Sheffield, 271 Weld Road Lower (Lot 3 DP 584231)
    - James Dinnis & Claire Frost, 247D Weld Road Lower (Lot 1 DP 432478)
    - Steven & Angela Blair, 247C Weld Road Lower (Lot 1 DP 500285)
    - Nicolas & Abigail Hackling, 247B Weld Road Lower (Lot 2 DP 432478)
    - Rebecca & Leanne Shaw, 255 Weld Road Lower (Lot 1 DP 484251)

4. I was appointed to hear and determine the application in May 2025. Directions for the pre-exchange of reports and evidence were issued as part of the hearing notice, on 5 June 2025.

5. I conducted a visit to the site of the application, 263 Weld Road Lower, Ōakura ("the Site") on 14 July 2025, the day prior to the hearing. I was accompanied by a Council Governance Advisor, who was not involved with the processing of this application nor the hearing. We also visited each of the five submitter's properties.

1.3 MATERIAL CONSIDERED AND HEARING PROCESS

6. Prior to the commencement of the hearing the following documentation was provided to me and reviewed:

    a. The resource consent application and assessment of environmental effects titled *'Heinrich and Sophie Fourie, 263 Weld Road Lower, Proposed Amendment to Consent Notice – Change in Location of Permitted Dwelling Platform*

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[2] Who is certified with a Chairing Endorsement under the Making Good Decisions programme and is a planner and resource management practitioner with over 31 years of practice experience.

[3] Following the Notification Decision of Richard Watkins under delegated authority for New Plymouth District Council (on the recommendation of Jacqui Manning, consultant planner), dated 30 December 2024.

(Sub22/48035)', Hansen Enterprises Taranaki Limited, and dated 27 August 2024 ("the Application" or "the AEE").[4]

b. Various items relating to further information including: a request for further information from NPDC dated 9 October 2024; response letter and associated attachments from T Hansen on behalf of Applicant, dated 27 November 2024; amended site plan drawn by BTW, dated 28 March 2025; and Landscape Memorandum Addendum from Bluemarble, dated May 2025.

c. NPDC Notification Report & Decision titled: *'Planner's Report & Recommendation Pursuant to Sections 95A & 95B of the Resource Management Act 1991, to the Principal Planner, in Respect of a Variation to Resource Consent SUB22/48035',* dated 30 December 2024.

d. The opposing submissions made on the application by:

   i. Steven & Angela Blair, 247C Weld Road Lower

   ii. Nicholas & Abigail Hackling, 247B Weld Road Lower

   iii. Greg & Katy Sheffield, 271 Weld Road Lower

   iv. Rebecca & Leanne Shaw, 255 Weld Road Lower

   v. James Dinnis & Claire Frost, 247D Weld Road Lower

e. A report on the Application and submissions prepared under section 42A of the RMA by Ms Jacqui Manning ("s42A Report"),[5] Planning Consultant for the Council. That report also appended expert landscape and visual effects evidence on behalf of the Council from Brad Dobson, BALC Limited.[6]

f. Statements of Evidence ("SOE's") in support of the Application from Richard Bain (landscape architecture), and Jennifer Carvill (planning).[7]

g. SOE on behalf of the submitters from Kathryn Hooper (planning).[8]

h. S42A Report Summary Statement of Jacqui Manning.[9]

7. Written statements that were received and presented at the hearing were:

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[4] Including appendices: A – Site Plan; B – Existing Consent Notice 125651061; C – Existing Land Covenant 7784375.1; D – Existing Land Covenant 12565106.5; E – Existing Land Covenant 12565106.6; F – Barn Style House Design; G – Geotechnical Report (dated: 1 June 2023), H – Landscape Memorandum (dated: August 2024 and May 2023); I – Written Approvals.

[5] Dated 23 June 2025.

[6] Attachment C to the s42A Report and Dated 19 June 2025.

[7] Both dated 30 June 2025.

[8] Dated 7 July 2025.

[9] Dated 14 July 2025.

a. Legal submissions on behalf of the Applicant from Mr SJ Mutch dated 15 July 2025.

b. Written statement from submitters:

i Nick Hackling

ii Rebecca Shaw

8. The s42A Report analysed the information received in relation to the Application along with the submissions received, and following assessment under sections 221, 104 and 104B of the RMA, recommended that consent be granted to the variation of consent notice application subject to conditions.

9. The s42A Report and s42A Summary Statement were taken "as read" at the hearing, as were the statements of pre-exchanged expert evidence. The two experts on behalf of the Applicant presented both written supplementary evidence and a verbal summary of their pre-circulated evidence at the hearing, while Ms Hooper on behalf of the submitters presented a verbal summary of her pre-circulated evidence along with comments on the matters arising at the hearing.

10. At the commencement of the hearing, I asked if there were any procedural matters that needed to be addressed.

11. There were no conflicts of interest or other procedural issues raised at the hearing.

12. At the end of proceedings, after hearing from the Applicant's legal counsel and expert witnesses, the submitters' expert witness and three of the submitters, the s42A reporting officer and expert landscape architect on behalf of the Council, and closing verbal comments from the Applicant's legal counsel, the hearing was adjourned. The adjournment was made pending receipt of:

a. Consolidated track change condition sets from Ms Manning on behalf of the Council, and Ms Hooper on behalf of the submitters respectively.[10]

b. A consolidated condition set on behalf of the Applicant in association with a written right of reply from the Applicant's legal counsel.[11]

13. I declared the hearing closed via Ms Straka on 1 August 2025.

1.4 SUMMARY OF EVIDENCE

14. Section 113(1)(ad) requires a decision on a resource consent application to include a summary of the evidence heard. A summary of the evidence heard at the hearing is included in Schedule 1 to this decision. Where necessary, I discuss evidence directly

[10] The consolidated condition sets from both Ms Manning and Ms Hooper were received on 15 July 2025.

[11] Dated 31 July 2025.

relevant to the issues in contention with the Application in the body of this decision. I also note that copies of all written material and statements of evidence associated with this hearing are held by Council and currently available on its website.[12]

2. DESCRIPTION OF THE PROPOSAL & SITE

15. In summary, the proposal seeks to vary a condition specified in a consent notice[13] related to habitable dwelling location, such that the dwelling can be located in Area 'A' in the western portion of the site, rather than in Area 'Z' in the southeast of the site. A habitable dwelling is already established in Area A within a building originally erected as a shed, the resource consent application is therefore retrospective.

16. The proposal is described in further detail in the AEE,[14] NPDC Notification Report,[15] and the s42A Report.[16]

17. The Site at 263 Weld Road Lower, Ōakura[17] and its surrounds are described in the AEE,[18] the NPDC Notification Report,[19] s42A Report,[20] Mr Dobson's landscape evidence for NPDC,[21] and Mr Bain's landscape evidence for the Applicant.[22] In summary, the following are key descriptors of the Site and surrounds:

    a. The Site is 4.1574ha in area and is irregular in shape with a pan handle access from Weld Road Lower.

    b. The Site is elevated at the Weld Road Lower entrance, and an upper tier exists on the eastern reaches of the site. As the driveway winds down beyond the reaches of the properties either side of the site at the Weld Road Lower entrance, the site opens to a larger flat paddocked area.[23]

    c. Established buildings and structures, consist of a shed, two above-ground water tanks located immediately west of the shed, and a building to the north of the

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12 https://www.npdc.govt.nz/council/hearings/2025/july/heinrich-and-sophie-fourie/

13 Consent Notice 2565106.1 applying to Record of Title Identifier 1090181.

14 AEE (pages 3 – 5).

15 NPDC Notification Report (page 4).

16 S42 A Report (pages 1, 4, & 8).

17 Legally described as Lot 2 DP 582431 (Record of Title: 1090181).

18 AEE (pages 3 – 4).

19 NPDC Notification Report (pages 4 – 8).

20 S42A Report (paragraphs 2.4 – 2.5).

21 Statement of Evidence ("SOE") of Brad Dobson (paragraphs 6.1 – 6.7).

22 SOE of R Bain (paragraphs 12 – 18).

23 S42A Report (paragraph 2.5).

shed, referenced in the application AEE and supporting documentation as a 'shed', which has been 'converted' to and occupied as a dwelling.[24]

d. In the immediate vicinity of the Site along Weld Road Lower, more intense rural – residential development has occurred resulting in smaller allotments and more than one habitable dwelling on some properties.[25]

3. RESOURCE CONSENT REQUIREMENTS AND ACTIVITY STATUS

18. There is agreement amongst the planning experts that the Operative New Plymouth District Plan is not relevant for the assessment of this application. The reasoning for this is set out by Ms Manning in the S42A Report[26] and need not be repeated here.

19. Under the Proposed New Plymouth District Plan (2019) ("PDP") the Site is located within the Rural Production Zone ("RPROZ").[27]

20. I note that in reviewing the PDP e-plan, the current version at the time of the hearing was 'Appeals Version 10, updated on 3 July 2025', which has since been updated to 'Appeals Version 11, updated on 19 August 2025'.' It is that current version of the PDP that this decision must be issued under and hereafter my references to the PDP are referring to Appeals Version 11. For completeness I note that based on Ms Manning's advice,[28] there are no outstanding appeals applicable to the relevant provisions of the RPROZ.

21. The s42A Report sets out the relevant statutory consideration for assessing an application to vary or cancel a consent notice and identifies:[29]

    a. Section 221 of the RMA affords an owner the right at any time after the deposit of the survey plan to apply to vary or cancel any condition specified in a consent notice.

    b. Sections 88 – 121 and s127 of the RMA apply to applications to vary or cancel a consent notice, with all necessary modifications (s221(3A) RMA).

    c. The decision-making framework for the proposal is contained in s104 and 104B of the RMA, with the proposal being classified as a discretionary activity.

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[24] Ibid.

[25] SOE of B Dobson (paragraph 6.3).

[26] S42A Report (paragraphs 2.11– 2.12).

[27] S42 Report (page 1), SOE of J Carvill (paragraph 21), and SOE of K Hooper (paragraph 23).

[28] S42A Report (paragraph 2.12).

[29] S42A Report (paragraphs 2.16 – 2.17).

22. There is agreement amongst the three planning experts that the overall status is a Discretionary Activity and that the applicable statutory framework is as set out under section 221 of the RMA as summarised above.[30]

23. My consideration of the Application is therefore based on its status as a discretionary activity.

4. RELEVANT LEGAL FRAMEWORK

24. Section 104(1) of the RMA sets out the mandatory matters to which I must have regard when considering the Application and submissions received. These include any actual or potential effects on the environment of allowing the activity, and the statutory instruments set out in subsection (1)(b). Those instruments considered relevant in this case are set out latter in this decision.

25. Section 104B of the RMA states that after considering an application for a discretionary activity, the application may be granted or refused, and if granted conditions may be imposed under s108 of the RMA.

26. On behalf of the Applicants, and with consideration of the various court cases applicable to cancelling and changing consent notices, Mr Mutch submits that *"…fundamentally what is required is the normal 104 assessment involving consideration of:*

   a. Whether adverse effects can be appropriately managed;

   b. Whether the Proposal is consistent with the relevant planning framework; and

   c. Ultimately, whether the Proposal should be granted on its merits." [31]

27. Mr Mutch also sets out that relevant matters raised in case law for varying and changing consent notices, have been addressed in the Applicant's proposal and evidence and that these matters include:[32]

   a. Consent notice circumstances / purpose;

   b. Comparative assessment;

   c. Change in circumstances; and

   d. Sustainable management / Part 2.

28. Mr Mutch, in response to Ms Hooper's planning evidence submits that *"there is no requirement for the Proposal to have the same or less effects on the environment than the status quo or to better manage effects or better achieve the requirements of*

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[30] SOE of J Carvill (paragraphs 25 – 28), and SOE of K Hooper (paragraph 25).

[31] Legal submissions for the Applicant (paragraph 29).

[32] Legal submissions for the Applicant (paragraphs 30 – 31).

the consent notice."[33] Ms Hooper identifies in her SOE matters to be considered from her review of two High Court cases involving consent notice decisions from Queenstown Lakes District Council (as set out further below). In regard to Ms Hooper's SOE, Mr Mutch submits that excerpts from previous decisions are potentially relevant considerations to be interpreted in light of the circumstances of each case, as opposed to universally applicable individual threshold tests.[34]

29. In her SOE Ms Hooper refers to *Ballantyne Baker Holdings Ltd v Queenstown Lakes District Council*[35] and *Frost v Queenstown Lakes District Council*,[36] both being High Court decisions on applications to vary or cancel consent notice decisions. Ms Hooper refers to the principles set out in those cases of good planning practice involving an examination of the purpose of the consent notice and inquiry into whether there has been a change in circumstances.[37]

30. I have carefully considered the legal submissions of Mr Mutch and the points made in the SOE of Ms Hooper on the case law applicable to applications made under s221 of the RMA to cancel or vary consent notice conditions. I find that the statutory tests are those set out under s104 of the RMA 'Consideration of Applications', with the key considerations being those summarised in paragraph 26 above.

31. Matters that should also be considered as part of the s104 assessment, given the circumstances of this case to change a consent notice condition for specifying the location of the one habitable dwelling permitted on the Applicant's property, are those identified by Mr Mutch and set out in paragraph 27 above. I note these matters cover those highlighted by Ms Hooper as important to good planning practice, being the purpose of the consent notice and whether there has been a change in circumstances.

32. In referring to a recent retrospective resource consent decision that I made on behalf of NPDC, Ms Hooper highlights that retrospective applications should be considered on their merits as if the proposal had not yet been built.[38] I find that this case differs insofar as the building itself is permitted as a shed. Rather then, the application should be considered on its merits, as if that building was established but had not been converted to a habitable dwelling, and then upon reaching my findings on the merits of the proposal the principle of 'proportionality' should be applied.

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[33] Legal submissions for the Applicant (paragraph 21).

[34] Legal submissions for the Applicant (paragraph 28).

[35] *Ballantyne Baker Holdings Ltd v Queenstown Lakes District Council [2019] NZHC 2844.*

[36] *Frost v Queenstown Lakes District Council [2021] NZHC 1474.*

[37] SOE of K Hooper (paragraphs 50 & 57).

[38] SOE of K Hooper (paragraphs 28 – 31).

33. For completeness I record that I agree with Mr Mutch that there is no requirement for the Proposal to have the same or less effects on the environment than the status quo, however I find the nature and scale of 'effects' of the amended dwelling location to be a fundamental matter for my decision.

5. CONSIDERATION OF THE PRINCIPAL ISSUES IN CONTENTION

5.1 ASSESSMENT OF EFFECTS ON THE ENVIRONMENT

34. The following considers my findings on the actual or potential effects on the environment of allowing the activity as is required under section 104(1)(a).

35. Prior to considering the effects of amending the consent notice to enable the dwelling to be located in 'Area A' as per the current situation, it is necessary to consider the circumstances and purpose of the original consent notice, requiring location in 'Area Z'.[39] This will provide context to the assessment of effects of the dwelling location sought in the Proposal. I will then consider any changes in circumstances since the decision on subdivision consent SUB22/48035 followed by a consideration of the various relevant effects of the dwelling location in Area A under subheadings for each effect category. I have considered the evidence provided by the three planning experts involved in the hearing in establishing the effect categories set out under the following sub-headings.

36. I set out these effects categories under each subheading and consider the evidence received, and key points raised in the submissions regarding each effect.

5.2 CIRCUMSTANCES AND PURPOSE OF ORIGINAL CONSENT NOTICE

37. The consent notice which is sought to be amended[40] resulted from Condition 15 of subdivision consent SUB22/48035. I have reviewed that subdivision consent application and Council decision and associated report which are appended to Ms Hooper's SOE. That application was applied for as a discretionary activity[41] under the Operative New Plymouth District Plan (2005) ("ODP") but was assessed by NPDC as a non-complying activity.[42]

38. As pointed out by Ms Hooper,[43] three of the submitters on this application, N & A Hackling, G & K Sheffield, and S & A Blair provided their written approval to

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39 See paragraph 27 above.

40 Consent notice 12565106.1.

41 On the basis of the proposed lifestyle lot (Lot 2) being the 5th allotment created from the parent title.

42 Due to Lot 3, which was created to form a boundary adjustment with, and to be amalgamated with, the Sheffield property, 271 Weld Road Lower (Lot 1 DP 315057), being considered a 6th allotment created from the parent title.

43 SOE of K Hooper (paragraph 35).

SUB22/48035 which was lodged and approved relying on conditions restricting habitable buildings on Lot 2 to one only, located within Area Z.

39. Another submitter, J Dinnis and C Frost, was not considered affected as there were no dwellings on their property at the time of the original subdivision.[44] The other submitter, R & L Shaw, purchased their property in 2024 after the approval of the subdivision, however the previous owner of their property provided written approval to SUB22/48035.[45]

40. I agree with Ms Hooper and the submitters that they are entitled to an expectation that the consent notice would be complied with, and the single dwelling permitted on the Applicant's property would be erected within Area Z as per Condition 15 of SUB22/48035. Ms Manning,[46] Ms Carvill[47] and Mr Mutch[48] are also quite correct to point out that section 221 of the RMA enables landowners to apply to vary or cancel consent notice conditions. As the Applicant's neighbours may be adversely affected by the Proposal to establish a habitable building within Area A rather that Area Z, the Application has been limited notified to those neighbours, five of whom have made a submission opposing the proposed change to the consent notice.

41. In terms of the purpose of the subject consent notice condition, it is as Ms Hooper sets out, *"to control the position of the dwelling on the allotment in order to avoid and mitigate effects on rural character and amenity."*[49] Mr Mutch is in general agreement stating the purpose of the consent notice condition *"was to manage landscape and visual impacts, primarily on neighbouring properties."*[50] While neither Ms Manning nor Ms Carvill explicitly state what the purpose of the consent notice was, their respective assessments of effects on the environment focus on rural character and amenity effects, including such effects on the submitters. I am therefore satisfied that the various experts involved in the hearing of this Application, have correctly focused their evidence on the effects relevant to the original purpose of the consent notice.

5.3 CHANGE IN CIRCUMSTANCES

42. Ms Carvill sets out in her SOE that there has been changes in circumstances since the subdivision consent was granted,[51] which I summarise as follows:

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44 SOE of K Hooper (paragraph 36).

45 SOE of K Hooper (paragraph 37).

46 S42A Report (paragraphs 2.14 & 3.8(c)).

47 SOE of J Carvill (paragraph 25).

48 Legal submissions for the Applicant (paragraph 17).

49 SOE of K Hooper (paragraphs 68, 77 & 120(c)).

50 Legal submissions for the Applicant (paragraph 31(a)).

51 SOE of J Carvill (paragraphs 22 – 24).

a. The Rural Production Zone Chapter of the PDP is now beyond challenge, and it recognises that low density rural dwellings are part of the rural character.

b. Material changes to the existing environment identified by Mr Bain include additional development in the form of dwellings, a dwelling extension, garage, and sheds on and in the surrounds of the Site.

c. A driveway dissecting Area Z has been constructed on the Site.

d. Mr Bain and Mr Dobson both give the opinion in their respective landscape and visual effects evidence that the immediate area surrounding and inclusive of the Site is transitioning more towards a rural lifestyle environment.

e. The applicants of the original subdivision SUB22/48035 that created the subject Site (Lot 2 DP 582431), being the current owners and occupiers of 249 Weld Road Lower provided their written approval to the Proposal.

43. Ms Manning in her s42A Summary Report states that there is no requirement on an application to demonstrate that there has been a change in circumstances since the consent was granted, but that this does not preclude the Applicant from doing so.[52]

44. Ms Hooper's opinion is that the changes in circumstances put forward by the applicant are not material, and that there has been no change of planning, legal or other circumstances which renders the consent notice of 'no further value'.[53] In terms of the RPROZ provisions of the PDP now applying, Ms Hooper gives her opinion that the policy framework has become more restrictive in terms of residential activities and that the directive to maintain rural character has become stronger.[54]

45. In response to Ms Hooper, Ms Carvill maintains that the current policy framework of the PDP provides greater recognition and support of residential activities in the RPROZ than the policy framework of the ODP which applied at the time the subdivision consent was granted.[55] In this regard I note that PDP policy RPROZ-P1 specifically lists residential activities as compatible with the RPROZ (while ensuring their design, scale and intensity is appropriate). I consider the relevant objectives and policies of the PDP later in this decision.

46. Mr Mutch draws on Ms Carvill's evidence in submitting that the current policy framework is more enabling of dwellings in the rural environment, and in drawing on the respective landscape evidence of Mr Bain and Mr Dobson, that there have been material changes to the existing physical environment.

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[52] S42A Summary Report (paragraphs 3.11 & 3.12).

[53] SOE of K Hooper (paragraph 84).

[54] SOE of K Hooper (paragraph 82).

[55] Supplementary SOE of J Carvill (paragraphs 10 – 12).

47. Given all of the above, I find:

    a. The Rural Production Zone of the PDP is now beyond the point of legal challenge which was not the case when SUB22.48035 was granted. Although RPROZ-O4 and more particularly RPROZ-P1 may be enabling of residential activities compatible with the character of the RPROZ, the PDP is no more enabling of a single residential dwelling on a property than in the equivalent Rural Environment under the ODP in a regulatory sense. Under both plans a single residential unit can be established as a permitted activity.[56]

    b. There has been an increase in consented and established built form within vicinity of the Site since SUB22/48035 was granted.

    c. The respective landscape experts for the Applicant and the Council both agree the immediate area of the Site is transitioning more towards a rural lifestyle environment in terms of character.[57]

    d. I do not consider the now established driveway bisecting Area Z within the Site, nor the written approval of the owners of 249 Weld Road Lower being gained, to be material 'changes in circumstances' relevant to the determination of this application.[58]

    e. There is no statutory requirement for a change in circumstances to be demonstrated in determining this application.

48. Given the purpose of the consent notice established above, and that the most relevant change in circumstances has been an increase in built form and its effect on the character of the area, a thorough examination of the potential effects of the Proposal on rural character and amenity (including as experienced by neighbours) is necessary in determining this application.

5.4 RURAL CHARACTER

49. The S42A Report sets out under the Rural Character heading[59] a summary of the key issues raised by submitters which include:

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[56] That is, assuming compliance with the relevant District Plan standards is achieved.

[57] I note that this relates to the cluster of lifestyle sites in the immediate vicinity of the Applicant's property resulting from subdivision under the ODP and is not consistent with the character sought by the RPROZ (Policy RPROZ-P3) of the PDP.

[58] Of course, accepting that as required by s104(3)(a)(ii) of the RMA any adverse effects on the owners and occupiers of 249 Weld Road cannot be had regard in making this decision.

[59] S42A Report (paragraph 4.9).

a. Visibility of built form in Area A from various submitter dwellings and outdoor living areas compared to no, or lesser, visibility in the previously agreed Area Z.[60]

b. Greater visibility of the dwelling in Area A from Weld Road Lower compared to Area Z.[61]

c. Creation of a cluster of dwellings in combination with the consented 2nd dwelling on the Dinnis / Frost property.[62]

d. Concern with the retrospective nature of application and the alteration in rural outlook as experienced from various submitters properties.[63]

e. Prominence of the Area A dwelling to primary views and the black colour stands out on the rural skyline.[64]

f. All submitters seek that Area Z is retained as the dwelling location and that the Area A building be converted back to a shed.

50. Ms Manning goes onto establish that the PDP seeks that the character of the RPROZ not be compromised by incompatible activities and that the character of the RPROZ includes extensive areas of vegetation and a low density built form with open space between buildings.[65] Incompatible activities within the RPROZ are to be avoided where adverse effects cannot be appropriately avoided, remedied or mitigated on rural character and amenity values. Character is to be maintained by controlling building height, location, and bulk, setback from boundaries, boundary treatments and earthworks.[66]

51. In relying on the landscape assessment of Mr Dobson and as the bulk and location standards associated with a dwelling in the RPROZ can be met, Ms Manning concludes that the proposal is consistent with the policy direction of the PDP relating to rural character.[67]

52. Following more detailed consideration of the matters raised in the submissions and the specific assessment undertaken by Mr Dobson on rural character, as experienced from public view points and each of the submitters properties, Ms Manning concludes *"...in context to rural character, I am of the view that while the proposal generates*

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60 Sheffield, Dinnis / Frost, and Shaw submissions.

61 Shaw submission.

62 Shaw and Blair submissions.

63 Shaw, Hackling, Dinnis / Frost and Blair submissions.

64 Blair submission.

65 S42A Report (paragraph 4.11).

66 S42A Report (paragraph 4.12).

67 S42A Report (paragraphs 4.13 – 4.15).

visual effects, these can be managed / mitigated, such that they are no more than minor."[68]

53. I now outline the key expert evidence of the two landscape architects on rural character effects.

54. Mr Bain in describing the existing landscape notes the changes that have occurred on both the subject Site and surrounding properties regarding building development, fencing and vegetation since the original subdivision (SUB22/48035) and concludes:[69]

    Collectively, these changes contribute to a more developed and domesticated landscape character, making a clear departure from the formerly open and pastoral appearance of the site.

55. Mr Bain states that the "*central visual concern is whether the proposal would materially diminish the amenity of neighbouring dwellings and their outdoor living areas"*[70] and sets out a summary of each submission. Mr Bain appends as Annexure A to his SOE his assessment of the visual effects of the proposal on each neighbouring property (including those of the five submitters) that he completed for his May 2025 Addendum Report. In that assessment Mr Bain concludes that for each of the neighbouring properties assessed, including the submitters properties, the magnitude of the effects of the proposal are *"Very low (less than minor)"*. He goes on to draw the following overall conclusions regarding the landscape and visual effects of the proposal:

    a. The proposal has acceptable landscape and visual effects and does not exceed the level of change anticipated in the Rural Production Zone.[71]

    b. The proposed dwelling complies with consent notice conditions 16-24, supporting visual recessiveness.[72]

    c. The area will remain rural in character.[73]

56. Mr Dobson visited the subject site and each of the submitters properties as well as the two public view points from Weld Road Lower and Lower Timaru Road.[74]

57. Mr Dobson considers the visual effects of the Proposal from public view points to be very low. In considering the submitter's properties Mr Dobson provides a thorough assessment and makes the following conclusions on the degree of effects:

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68 S42A Report (paragraph 4.26).

69 SOE of R Bain (paragraph 17).

70 SOE of R Bain (paragraph 26).

71 SOE of R Bain (paragraph 30).

72 SOE of R Bain (paragraph 31).

73 *Ibid.*

74 SOE of B Dobson (paragraph 3.2).

a. 271 Weld Road Lower – Sheffield property: Low-Moderate

b. 255 Weld Road Lower – Shaw property: Low

c. 247B Weld Road Lower – Hackling property: Very Low

d. 247C Weld Road Lower – Blair property: Low

e. 247D Weld Road Lower – Dinnis / Frost property: from main dwelling – Negligible, from second dwelling – Low

58. In concluding that the effects on the Sheffield property would be Low-Moderate, Mr Dobson explains this is *"primarily due to the increasing cumulative presence of residential character and activity during both the day and night, in contrast with the retention of rural character anticipated at the time of the subdivision."*[75]

59. Mr Dobson's overall conclusion is that the Proposal will result in a modest increase in landscape and visual effects, stating that the Proposal *"introduces a more visible built form and associated residential activity, this is consistent with the surrounding incremental shift towards a rural lifestyle character area."*[76]

60. While there is disagreement between Mr Bain and Mr Dobson as to the degree of visual effects that the Proposal subjects some of the submitters to, I find that in RMA terms Mr Bain's assessment would equate to less than minor for all submitters, while Mr Dobson's assessment would equate to less than minor for some submitters and minor for others, including the Sheffield property (based on a Low-Moderate rating).[77] Both landscape experts have considered the effects mitigation of landscape plantings in their assessments, which I will return to in more detail.

61. Ms Manning's conclusion on rural character, set out in paragraph 52 above, is based on Mr Dobson's assessment and conclusions, equating to effects being no more than minor. Given that Mr Bain and Mr Dobson as landscape architects are the relevant experts for advising on rural character effects, it is significant for my findings that neither of them consider such effects to be more than minor, and that there is no expert evidence to the contrary.

62. Ms Carvill in her SOE assesses rural character and amenity effects under a single heading and relies on the evidence of Mr Bain. Ms Carvill also states that she concurs with the conclusions of the s42A Report aside from some of the recommended conditions. She also notes the location of the dwelling in Area A meets all of the PDP effects standards and all requirements of the consent notice aside from that requiring location within Area Z. Ms Carvill goes on to point out the extent of Area Z is 2,834m^2

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[75] SOE of B Dobson (paragraph 13.23).

[76] SOE if B Dobson (paragraph 14.1).

[77] Having regard to the New Zealand Landscape Assessment Guidelines (SOE of B Dobson – paragraph 4.1, Table 1).

and would provide for a much larger dwelling than the Proposal where the dwelling footprint is confined to an area of 216m^2.[78]

63. Ms Carvill considers *"that the effects on rural character and amenity of amending the authorised location of the dwelling at the site from the 2,834m^2 Area Z to the 216m^2 Area A will be less than minor."*[79]

64. Ms Hooper also assesses effects in her SOE under a single heading of 'Rural Character & Amenity' but does distinguish that amenity effects are of greater concern than 'physical' rural character, through the following statement:

> *"Even if the 'physical' rural character and visual effects were deemed to be acceptable, given the 'permitted baseline' of the shed on Area A, or on the basis that visual screening and planting could mitigate them so that they are negligible, amenity effects remain."*[80]

65. Nevertheless, Ms Hooper's conclusion on rural character effects is that the habitable dwelling on Area A *"will have a greater effect on the character of the rural production zone in general, and the character of the area when viewed from adjoining properties."*[81] Respecting the statements of the various submitters, who are the occupiers of those adjoining properties, I do not disagree with Ms Hooper on this point. As Mr Mutch points out however, there is no legal requirement for *"the Proposal to have the same or lesser effects on the environment than the status quo or to better manage effects or better achieve the requirements of the consent notice."*[82]

66. Given all the above, I find that the adverse rural character effects of locating the dwelling within Area A as proposed, to be no more than minor and acceptable.

5.5 RURAL AMENITY

67. The s42A Report summarises the key issues raised by submitters which include:

    a. That their written approval to SUB22/48035 was based on consultation and the establishment of Area Z as the dwelling location.[83]

    b. Loss of privacy, outlook, and enjoyment from northern aspects of dwelling and outdoor living space;[84] loss of privacy and enjoyment given the proximity of the

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78 SOE of J Carvill (paragraphs 30 – 34).

79 SOE of J Carvill (paragraph 37).

80 SOE of K Hooper (paragraph 107).

81 SOE of K Hooper (paragraph (118(a)).

82 Legal submissions for the Applicant (paragraph 21).

83 Sheffield and Hackling submissions.

84 Sheffield submission.

Area A dwelling and associated outdoor living space;[85] and reduced privacy from outdoor living area which has clear views over Area A.[86]

c. Effects of light pollution, noise, loss of sun light, loss of rural feel and space, and loss of privacy and enjoyment of property.[87]

d. Lombardy poplars near boundary affecting morning sun and the functioning of an effluent bed.[88]

e. Applicant's plans to run a riding school from the site in the future.[89]

68. The s42A Report goes on to establish the direction of the RPROZ in regard to rural amenity values, which includes objectives that the predominant character and amenity of the zone is maintained which includes a range of effects from rural activities. Policies include maintaining rural character and amenity by managing noise and light emissions, and specifically that artificial lighting is designed, located, and operated to maintain amenity values within zones.[90]

69. Ms Manning in her s42A Report goes onto assess amenity effects under the subheadings of Privacy, Light & Noise, and Established Planting. I find this to be a logical break down of the amenity effects raised by the submitters and use those same subheadings below.

5.5.1 Privacy

70. Ms Manning relies on the Mr Dobson's assessment of individual properties and sets out the following key points relating to privacy effects:[91]

a. Amenity effects from the Sheffield and Shaw properties will be more related to visual experience as opposed to a loss of privacy due to differences in elevation. Mr Dobson recommends how privacy can be improved to these two properties with landscape plantings.

b. From the Blairs property the key effect will be the cumulative presence and increase of residential buildings, rather than overlooking or privacy effects. Recommended planting mitigation could have some enhancement for both the Hackling and Blair properties.

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85 Hackling submission.

86 Shaw submission.

87 Dinnis / Frost and Blair submissions.

88 Dinnis / Frost submission.

89 Blair submission.

90 S42A Report (paragraphs 4.29 – 4.31).

91 S42A Report (paragraph 4.39(a)-(e)).

c. To mitigate privacy effects on the 2nd dwelling on the Dinnis Frost property a 5m wide native planting buffer is recommended along with the removal of the Poplars.

71. Ms Manning considers that future privacy effects could result from the establishment of a mezzanine floor or loft area with the dwelling in Area A and therefore recommends that any glazing installed higher than 2.4m above ground level comprise of obscured glass.[92]

72. With the imposition of such a condition along with the landscaping recommendations of Mr Dobson, Ms Manning concludes that privacy effects can be managed / mitigated such that they are no more than minor.

73. Ms Hooper refers to amenity effects generally, which are inclusive of privacy. She states effects on rural amenity are not as simply mitigated as visual effects.[93] Ms Hooper goes on to state: *"The change in location of residential activities will (and does currently) affect the rural amenity of neighbours who find themselves suddenly living closer to a dwelling than they had relied on, or looking over a dwelling (and associated activities) instead of a shed."*[94]

74. Ms Hooper's concerns in terms of rural amenity include the submitters being entitled to rely on the consent notice restricting a future dwelling to Area Z and therefore not being afforded the ability to adapt and plan their own properties in response to the Proposal shifting the dwelling to Area A.[95]

75. I do not disagree that the points raised by Ms Hooper are important in terms of the amenity of the submitters, however those concerns are focussed on the relative merits of the dwelling being located in Area A as opposed to Area Z, which is not the correct legal test. My decision must consider the actual and potential effects on the environment of allowing the Proposal, rather than whether those effects are greater than if the dwelling were to be located in Area Z. I find that based on the expert landscape evidence of Mr Dobson in particular, that adverse effects on privacy are no more than minor and acceptable with consideration of mitigation planting and conditions recommended by Ms Manning restricting outlook from the dwelling.

5.5.2 Light and Noise

76. The s42A Report sets out the concerns raised in the submissions relating to light and noise effects, including night time light pollution and noise and traffic effects being greater for a habitable building within Area A compared to if that building was left as a

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92 S42A Report (paragraphs 4.40 – 4.41).

93 SOE of K Hooper (paragraph 108).

94 SOE of K Hooper (paragraph 109).

95 SOE of K Hooper (paragraph 110).

shed.[96] Ms Manning states that sheds are typically more contained relating to storage, versus the overspill of outdoor living areas that occurs with a habitable building, which generates demand for outdoor lighting and increased outdoor noise.[97]

77. After considering the specific assessment of lighting and noise effects on the residential amenity of each submitter and mitigation recommendations from Mr Dobson, [98] Ms Manning concludes that while the proposal generates light and noise effects, these can be managed / mitigated such that they are no more than minor.[99]

78. As mentioned above Ms Hooper considers rural amenity effects generally and so does not provide a separate assessment of light and noise effects other than to note that such effects are associated with residential oriented activity from a dwelling.[100]

79. As Ms Manning points out the consent notice condition from the original subdivision applying to Lot 2 regarding light spill effects still stands and states:[101]

    No external point sources of light shall be visible from outside the Lots. All external light fittings shall be 'hooded' and cast down.

80. I note that there is little specific discussion on noise effects in the various statements of evidence or in the s42A Report. This is likely to be because typical noise from a residential dwelling should not breach the noise standards of the PDP, albeit that noise effects from people socialising outdoors can be annoying. In this case location of a dwelling in Area Z would have been closer to some submitters' properties (Sheffield and Shaw), while location in Area A is closer to others (Hackling, Blair, and Dinnis / Frost).

81. In regard to light and noise effects, I find agreement with Ms Manning, that these effects can be managed and mitigated such that they are no more than minor.

5.5.3 Established Planting

82. As Ms Manning points out, the submitters have all raised concerns with some of the plantings that have been established on the Site. This includes with the various rows of Poplars which could provide screening of the dwelling within Area A but could also ultimately obstruct open rural views and generate shading effects.[102]

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96 S42A Report (paragraphs 4.44 – 4.46).

97 S42A Report (paragraph 4.47).

98 S42A Report (paragraph 4.48(a)-(d)).

99 S42A Report (paragraph 4.49).

100 SOE of K Hooper (paragraph 94).

101 S42A Report (paragraph 4.48(a)).

102 S42A Report (paragraph 4.54).

83. The s42A Report sets out the recommendation made by Mr Dobson regarding planting in mitigating effects on each of the submitters, these are summarised as follows:

    a. Sheffield property – retaining protection of the viewshaft (Area X) and positioning planting closer to the proposed Area A dwelling. Including implementing more substantial planting around the existing broadleaf hedge.

    b. Shaw property – Removing planting within viewshaft Area Y and replacing it with planting consistent with the land covenant (must not exceed 2m in height).

    c. Hackling property – Removal of the Poplar row and establishment of a double row of mixed native evergreen vegetation.

    d. Blair property – Would benefit from the mitigation recommended for the Hackling property.

    e. Dinnis / Frost property – Replacement of the existing Poplar shelterbelt with a 5m wide native planting buffer.

84. As set out in the statements of evidence of Mr Bain and Ms Carvill the Applicants are accepting of some of the above recommendations but not others. The Applicant's final position in regard to conditions was provided with the Right of Reply on 31 July 2025, which remained largely the same as set out in Ms Carvill's SOE, but included some changes to condition details, including acceptance of some of the changes sought by Ms Hooper and alterations suggested by Ms Manning.

85. The landscape planting related conditions recommended in the s42A Report that are not supported by Ms Carvill and Mr Bain are those requiring:

    a. The removal of the existing Poplar shelterbelts from three locations on the Site (in proximity to the Sheffield, Hackling, and Dinnis Frost properties).

    b. Additional planting (and mounding) in vicinity of the existing broadleaf hedge (regarding mitigation for the Sheffield property).

86. Further to this, Ms Carvill sets out amendments to the details regarding the width, extent, and height of mixed native plantings recommended in various locations in the s42A Report. Reasons for opposing the removal of the Poplars are set out in Ms Carvill's SOE as follows:[103]

    "As discussed in the evidence of Mr Bain, the existing Poplar provide shelter, visual scale, and enable winter sunlight. I concur with Mr Bain that the removal of the Poplars is not justified for the purposes of managing the effects of the proposal."

[103] SOE of J Carvill (paragraph 61(d).

87. In response to my questioning at the hearing regarding the Poplars and potential conditions requiring them to be removed, Mr Bain made the following points:

    a. The Poplars were planted as a permitted activity.

    b. The Poplars in being deciduous do not block winter sunlight.

    c. The Poplar cultivar that has been planted on the Site does not grow as tall as other varieties, and in this coastal environment a maximum height of 12 – 20m is anticipated, with a growth rate of approximately 1m per year.

88. Mr Bain maintained his position that there is no justification for the removal of the Poplars through consent conditions.

89. In his comments and responses to my questions at the hearing, Mr Dobson provided his opinion that although the Poplars will provide shelter to the Applicants, this would also be provided by other mitigation planting. Mr Dobson agreed with Mr Bain that the growth rate would be approximately 1m per year and that the maximum height would be around 20m, but he maintained his position that the recommended conditions are justified as the Poplars will cause shading effects on the submitters, noting that such effects are not just limited to being adverse during the winter and that even with a deciduous tree there will still be some shading effects when the tree is bare. He also stated that removal of the Poplars will help maintain into the future the rural views currently enjoyed by some of the submitters.

90. In terms of other planting conditions Mr Dobson considers reliance on the Griselinia hedge alone is not sufficient mitigation for the Sheffield's, that in regard to the Hackling's boundary a 5m height at the top of the embankment is a practicable approach to achieving shelter for the Applicant along with landscape mitigation, and that a double row of native planting along the Dinnis / Frost boundary is probably sufficient (as opposed to a minimum 5m width).

91. Ms Hooper's evidence is focused on the substantive decision which she considers should be to decline the application, therefore she does not comment on the detail of the conditions proposed in the s42A Report. Ms Hooper does however attach a modified condition set to her evidence, in the event that the application is granted. That condition set was further updated by Ms Hooper post the hearing, which to avoid confusion is the version that I refer to as follows.

92. Regarding landscape conditions, Ms Hooper supports and seeks retention of the Poplar removal conditions, and the additional mounding and planting in vicinity of the Griselina hedge as recommended by Mr Dobson. In the condition set appended to her evidence Ms Hooper had sought 25m wide native planting strips parallel to the Hackling and Dinnis / Frost boundaries, post hearing however her condition set is modified to accept a double row of mixed native evergreen planting in specified locations.

93. Accordingly, I find the principal area of disagreement regarding landscape mitigation is whether the Poplar shelterbelts should be removed adjacent various boundaries and whether additional planting is required in vicinity of the Griselinia hedge. Having considered the evidence and concerns raised in the submissions, if I am to grant consent, I find removal of the shelterbelts to be an appropriate amenity effects mitigation, however I do not find additional mounding and planting in the vicinity of the Griselinia hedge to be necessary. Rather a minimum height requirement for the hedge and the screening of living area windows (as is proposed by the Applicant for the additional consent notice conditions) will assist in the mitigation of privacy effects to the east.

5.6 LOSS OF LAND FOR PRIMARY PRODUCTION

94. Ms Carvill in her SOE considers the effects of the Proposal on the availability of land for land based primary production and notes that Area A is classified as LUC Class 4e-2. Ms Carvill therefore concludes that the repositioning of the dwelling location to Area A will have no adverse effect on highly productive. I concur with Ms Carvill on this matter.

95. I note that neither Ms Manning nor Ms Hooper comment on this issue in their effects assessments but do so in their assessments of statutory instruments under section 104(1)(b), which I come to below.

5.7 CUMULATIVE EFFECTS

96. The S42A Report does not separately consider cumulative effects, however Ms Hooper comments on such effects in her SOE.[104] She draws on Mr Dobson's statement that: *"The landscape is now functionally transitioning toward a rural lifestyle environment, particularly when considered cumulatively with other nearby development."*[105] Ms Hooper goes on to state that current policy settings require the applicant to avoid this cumulative effect and therefore the consent should not be granted.

97. I note that Mr Dobson gives careful consideration of cumulative effects in his SOE including in view from public places and each of the submitters' properties and this has contributed to the effects ratings that he assigns in terms of each of the submitters which I have discussed under the 'Rural Character' heading above. In terms of overall landscape effects, Mr Dobson notes that *"while residential amenity and night-time effects will contribute to cumulative change in land use character these are not deemed to be more than minor."*

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[104] SOE of K Hooper (paragraphs 127 – 129).

[105] SOE of B Dobson (paragraph 14.4).

98. Having regard to Mr Dobson's evidence, I find that the Proposal will result in some cumulative effects, I also find that the scale of such effects is no more than minor in RMA terms.

5.8 EFFECTS CONCLUSION

99. I acknowledge the concerns of the submitters' and the points made by Ms Hooper regarding the adverse effects of the dwelling in Area A being greater than if located in Area Z. As I have set out above however, there is no requirement for the effects of the dwelling in Area A to be less than or equal to those of Area Z.

100. I have carefully considered the expert landscape evidence of Mr Bain and Mr Dobson, and the evaluative planning evidence of Ms Carvill, Ms Manning, and Ms Hooper. I find it compelling that the evidence of the respective landscape architects is that the effects of the Proposal equate in RMA terms to less than minor or minor.[106] On that basis in drawing a conclusion under section 104(1)(a) of the RMA I favour the planning evidence of Ms Cavill and Ms Manning that the adverse effects related to the Proposal can be sufficiently managed through additional conditions to be acceptable.[107]

6. STATUTORY INSTRUMENTS

6.1 PROPOSED NEW PLYMOUTH DISTRICT PLAN

101. The relevant provisions of the PDP require consideration under s104(1)(b)(vi) of the RMA.[108]

102. The s42A Report comments on relevant PDP objectives and policies as relevant to each of the effects categories considered. Ms Manning also sets out all objectives and policies that she considers relevant to the proposal in Attachment E to the s42A Report, which include:

    a. Rural Environment Strategic Objectives: RE-11, and RE-12.

    b. Subdivision Chapter: Objectives SUB-O1 – SUB-O3; and Policies SUB-P1 – SUB-P5 & SUB-P10 – SUB-P15.

    c. Light Chapter: Objectives LIGHT-O1 & LIGHT-O2; and Policies LIGHT-P1 & LIGHT P2.

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[106] This is also a point made by Mr Mutch (paragraph 34 of legal submissions, and paragraph 13 of closing submissions).

[107] S42A Report (paragraph 4.49) and SOE of J Carvill (paragraph 42).

[108] The expert planners agree that the application only requires consideration under the PDP and that the Operative District Plan does not need to be assessed (S42A Report (paragraph 2.12), SOE of J Carvill (paragraph 21), and SOE of K Hooper (paragraph 149).

d. Rural Production Zone: Objectives RPROZ-O1 – RPROZ-O7; and Policies RPROZ-P1 – RPROZ-P8.

103. My observation is that only some of those objectives and policies listed in the s42A Report Attachment E have specific relevance to the Proposal, although the full list provided is helpful for understanding the planning context of the RPROZ and the direction of the PDP.

104. In her effects assessment Ms Manning summarises the direction of the RPROZ objectives and policies, including to maintain the predominant character and amenity of the zone and avoiding activities incompatible with that predominant character and which would result in adverse effects that cannot be avoided or appropriately remedied or mitigated.[109] Ms Manning also comments that a single dwelling is anticipated on rural zoned land by the PDP subject to compliance with effects standards, which the Proposal meets. Ms Manning takes these PDP provisions into account when drawing her conclusion that the effects of the Proposal can be managed to be no more than minor and acceptable against the PDP policy framework.[110]

105. Ms Manning also briefly comments on the Lighting Chapter objectives and policies seeking to ensure that artificial lighting maintains amenity values.[111]

106. Ms Carvill concurs with Ms Manning's findings on the Proposal being consistent with the relevant PDP provisions,[112] and makes specific reference to objective RPROZ-O4 and policies RPROZ-P1 and RPROZ-P4 as being of particular relevance to residential activities. Ms Carvill concludes that changing the consent notice to provide for the dwelling in Area A will be wholly consistent with these objectives and policies.[113]

107. Ms Hooper disagrees with the conclusions of Ms Manning and Ms Carvill and assesses the Proposal to be inconsistent with the PDP objectives and policies in terms of the following:

a. The Proposal will result in noticeable adverse effects compared to the status quo, which is not consistent with the overarching policy to maintain rural character and amenity (in the RPROZ).[114]

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109 S42A Report (paragraphs 4.11 4.29 – 4.30)

110 S42A Report (paragraphs 4.79 – 4.80).

111 S42A Report (paragraph 4.31).

112 SOE of J Carvill (paragraph 43).

113 SOE of J Carvill (paragraph 47).

114 SOE of K Hooper (paragraph 144).

b. A dwelling on Area A: is not as compatible as Area Z and compromises subdivision objective SUB-O1 (compatibility with the zone),[115] is inconsistent with policy SUB-P10 by compromising rural character,[116] does not respond positively to surrounding rural context regarding SUB-P14,[117] and will not maintain or enhance the attributes that contribute to rural character and amenity values in terms of SUB-P15.[118]

108. Ms Hooper states that if the same subdivision was presented to the NPDC today as that which was granted in 2022, it would be unlikely to be granted.[119] While this may be true with the change in direction to rural subdivision under the PDP, it is not relevant to my decision. The creation of the Applicant's property by subdivision is not in question, rather it is the location of the dwelling within that property.

109. Ms Carvill in her supplementary evidence states her strong disagreement with Ms Hooper's conclusions regarding the consistency of the Proposal with the PDP objectives and policies.[120] In a similar vein Mr Mutch submits that Ms Hooper's conclusion *"does not bear careful scrutiny"*, and that *"it is difficult to understand how a single (permitted) dwelling on a site in the Rural Production Zone can be inconsistent with either planning instrument"*[121] (the PDP and Taranaki Regional Policy Statement).

110. I have carefully considered the PDP objective and policy assessments made by all three planning experts. Given my findings under s104(1)(a) on effects, I find in favour of the assessments and conclusions of Ms Manning and Ms Carvill in that the dwelling in Area A with mitigation conditions, will achieve general consistency with the relevant objectives and policies of the RPROZ seeking to maintain rural character and amenity.

111. I find those objectives and policies of the Subdivision Chapter which provide direction to subdivision design regarding the location of rural dwellings as being of some relevance, however given my findings regarding the effects of the proposed dwelling location, I cannot accept Ms Hooper's conclusion that the Proposal is inconsistent with those objectives and policies.

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115 SOE of K Hooper (paragraph 147(a)).

116 SOE of K Hooper (paragraph 147(b)).

117 SOE of K Hooper (paragraph 147(c)).

118 SOE of K Hooper (paragraph 148).

119 SOE of K Hooper (paragraph 150).

120 Supplementary SOE of J Carvill (paragraphs 17 & 18).

121 Legal submissions for the Applicant (paragraph 44).

6.2 REGIONAL POLICY STATEMENT FOR TARANAKI 2010

112. The s42A Report states there are two relevant suites of provisions in the Taranaki Regional Policy Statement ("RPS") being Use and Development of Resources – Objective UDR 1 and Natural Features and Landscapes, Historic Heritage and Amenity Value – Objective AMY 1, and their supporting policies.[122] In assessing those provisions Ms Manning concludes that the Proposal is not in conflict with them.[123] Ms Manning goes onto state that the PDP has been designed to give effect to the RPS and that the same finding of consistency with the PDP objectives and policies can be applied to the relevant parts of the RPS.[124]

113. Ms Carvill concurs with Ms Manning's findings on the RPS.[125]

114. Ms Hooper assesses the Proposal against UDR Objective 1.1 and AMY Policy 1.1 and in both cases considers that a dwelling in Area Z is more consistent than the Proposal for a dwelling in Area A. As already discussed, the statutory considerations for determining this application do not require me to find that Area A has the same or lesser effects on the environment or consistency with the relevant statutory instruments than Area Z. Rather the proposal is required to be considered on its merits against the relevant statutory provisions. As with consideration of the relevant PDP objectives and policies, I find that my findings in regard to the effects on the environment are relevant[126] in preferring the evidence of Ms Carvill and Ms Manning on consistency with the relevant RPS provisions.

6.3 NATIONAL POLICY STATEMENTS

115. Under s104(1)(b)(iii) I am required to have regard to any relevant national policy statements. Ms Manning considers the National Policy Statement on Highly Productive Land 2022 ("NPS-HPL") to be relevant, she sets out its single objective and policies 6 and 8. She identifies that the location of the dwelling within Area A is mapped as LUC4. Given the above, Ms Manning concludes that under the NPS-HPL Council may consider allowing the site to be developed and used for the purpose proposed.[127]

116. As set out under the heading *'Loss of Land for Primary Production'* above, Ms Carvill considers that the proposal has no adverse effect on highly productive land.[128]

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122 S42A Report (paragraph 4.64).

123 S42A Report (paragraph 4.68).

124 S42A Report (paragraph 4.68).

125 SOE of J Carvill (paragraphs 43 – 44).

126 Given the relevant RPS provisions also relate to effects on rural amenity values.

127 S42A Report (paragraph 4.72).

128 SOE of J Carvill (paragraph 41).

117. Ms Hooper agrees with Ms Manning's assessment.[129]

118. There being no evidence to the contrary I find that the Proposal achieves general consistency with the NPS-HPL.

119. No other national policy statements or national environmental standards were identified as being relevant to the assessment of the proposal by the planning experts.

7. OTHER CONSIDERATIONS

7.1 OTHER MATTERS

120. The s42A Report considers section 104(1)(c) of the RMA 'Other Matters' and concludes there are no other matters relevant that haven't already been addressed.[130]

121. Both Ms Carvill and Ms Hooper refer to precedent effects and integrity issues as potentially relevant under section 104(1)(c).

7.1.1 Precedent Effects and District Plan Integrity

122. Ms Carvill points out future applications for a similar activity would need to be assessed on their merits and that the proposal is wholly consistent with the objectives and policies of the RPROZ. She then goes on to conclude no precedent effect or impact on the integrity of the plan would occur as a result of the grant of the application.[131]

123. Ms Hooper on the other hand considers that there is a significant risk of precedent effects if the application is granted. She gives the following three scenarios relating to precedent:

    a. Use of a consent notice condition to gain approval for a non-complying subdivision and then undertaking a variation of that consent notice as a discretionary activity at some later stage.

    b. The overarching ability for the consent notice to be changed, making them less binding on the current and future landowners than they are meant to be.

    c. The potential precedent for any shed to be converted to a dwelling to circumvent PDP provisions that are stricter for dwellings than sheds.

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[129] SOE of K Hooper (paragraph 142).

[130] S42A Report (paragraph 4.62).

[131] SOE of J Carvill (paragraph 49).

124. Ms Manning in her s42A Summary Statement responds that each site and circumstance are unique and must be considered on its merits in respect of the RMA and that as the application is for a discretionary activity (as opposed to non-complying) granting consent would not undermine other consent notices nor set a precedent.[132]

125. Similarly, in his closing submissions Mr Mutch states that granting the application would not create any precedent or plan integrity effect of concern. He cites an Environment Court case[133] involving the removal of a consent notice preventing further subdivision where the Court found that cancellation of the consent notice condition would not give rise to adverse precedent as the proposal satisfies the case for consent, in accordance with the plan's intentions.[134]

126. As Ms Hooper herself points out,[135] it is likely to be more difficult to gain consent for a non-complying activity subdivision in the Rural Production Zone under the PDP. I have reviewed the full wording of PDP policies SUB-P10 and SUB-P15 (as set out in Attachment E of the s42A Report) and agree with Ms Hooper on that point. Regarding the first of Ms Hooper's scenarios on precedent, I find that a consent notice that restricts the location of a future dwelling will unlikely provide a pathway for discretionary or non-complying activity subdivision consent under the PDP to the extent that it did under the ODP. In making this conclusion I note Policy SUB-P10 seeks to only allow a small allotment where there is a large balance area.[136]

127. Notwithstanding the change in subdivision direction under the PDP, I agree with the points made by Ms Manning, Ms Carvill and Mr Mutch, the application is for discretionary activity resource consent, which I have found to achieve consistency with the relevant PDP objectives and policies and to have an acceptable level of effects on the environment. I do not therefore find that granting consent would give rise to adverse precedent, and for similar reasons nor district plan integrity issues.

7.2 PART 2 OF THE RMA

128. The Court of Appeal judgement *RJ Davidson Family Trust v Marlborough District Council* clarified that for resource consent applications where the relevant plan provisions have clearly given effect to Part 2, there may be no need for decision makers to refer to Part 2 if doing so *"would not add anything to the evaluative exercise."*

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132 S42A Summary Statement (paragraph 3.15).

133 *Drach v Tasman District Council [2021] NZEnvC 118.*

134 Closing Submissions for the Applicant (paragraph 23).

135 SOE of K Hooper (paragraph 150)

136 Rule SUB-R4 requires a balance lot with a minimum area of 20ha following subdivision.

129. The s42A Report states that the PDP has been prepared in respect of the National Policy Statements and implements them, and at least for the purposes of this application remains consistent with the higher-level documents. Ms Manning goes on to conclude: "*There is no 'inconsistency' or 'incomplete coverage' that might warrant resort to part 2 and I do not consider an assessment against Part 2 is required.*"[137] I also find this to be the case.

8. CONCLUSIONS ON 104 ASSESSMENT

130. Following my analysis of the principal issues in contention with the Application and other relevant matters, I find that the Application merits approval under s 104B of the RMA.

131. I now turn to the issue of the conditions that ought to be imposed on the consent to be granted.

9. CONSENT CONDITIONS

132. I have reviewed the three sets of draft consent conditions provided post hearing by Ms Manning, Ms Hooper and Ms Carvill and reviewed the closing legal submissions from Mr Mutch relating to conditions, as well as all the evidence presented on conditions. I note in the Applicants final proposed conditions separation is made between conditions to be varied or added to the consent notice (12565106.1) and additional conditions that resource consent SUB22/48035.03 should be subject to, but which are not part of the consent notice. The later conditions include the requirement for a Detailed Landscape Plan ("DLP"), the process for the DLP, its purpose, the elements that it is required to include, and its implementation. I agree that this is the correct approach, with the consent notice conditions complying on an ongoing basis as an instrument on the record of title and the DLP conditions requiring immediate action and implementation as resource consent conditions. I therefore address the conditions in contention under those subheadings below.

9.1 CONSENT NOTICE CONDITIONS

133. Most of the conditions on the proposed amended consent notice are agreed to by the Applicant, Ms Manning and Ms Hooper (acknowledging that the submitters seek that consent be declined in the first instance). I however, find there to be disagreement on the following matters:

    a. Condition (e) which restricts the nature of the curtilage that can be located between the dwelling and the western boundary. The Applicant's wording states:

[137] S42A Report (paragraph 4.75).

"No decks, pools, spas, or barbeque areas shall be located…" Both Ms Manning and Ms Hooper also include 'patios' and 'courtyards' in the list.

b. Condition (f) seeks to restrict buildings and structures within proximity to the western boundary. While there is agreement as to the intent of this condition there is disagreement as to the wording details. The Applicant's proposed wording differentiates between the northern portion of the western boundary where a 15m building setback is proposed and the southern portion, inclusive of the area adjacent the dwelling where a 28m setback is proposed. Ms Manning and Ms Hooper both propose a 30m setback from the western boundary and also specify that the setback is inclusive of 'courts or arenas for sporting or recreational activities'.

c. Condition (g) is an additional condition proposed by Ms Hooper on behalf of the submitters in her SOE, which Ms Manning considers to be an *Augier condition*. Condition (g) as proposed by Ms Hooper would require the written approval of all five submitters before the Applicant's property (Lot 2 DP 582431) could be used for any Sport and Recreation Activities (as defined by the PDP). The Applicant has not included condition (g) in their proposed conditions.

Consideration

134. Starting with condition (e) the purpose of the condition is to prevent adverse noise amenity effects on neighbours from outdoor activities that may involve the congregation of people socialising within proximity to the western boundary. As the location of 'decks' are agreed by all parties to be included within the restricted outdoor activities under condition (e), I also find it appropriate to include 'patios' and 'courtyards', being equivalent to a deck in function but based on a paved surface for a patio, or being partially enclosed for a courtyard. Accordingly, I find that Condition (e) as proposed by the Applicant, should be amended with 'patios' and 'courtyards' added to the wording.

135. Regarding proposed condition (f), in his closing submissions Mr Mutch provides the following explanation of the Applicant's proposed wording:

"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. For completeness, neither Mr Bain nor Ms Carvill consider such restrictions necessary to manage effects."

136. The 28m proposed by the Applicant's is based on the closest existing structure to the western boundary, being the water tanks adjacent to the existing shed. Given that 30m was generally agreed as appropriate by Ms Manning and Ms Hooper, I find the rationale for 28m to be appropriate, while still being effective at mitigating visual and

other effects from buildings or structures sitting immediately on top of the embankment as viewed from the neighbouring properties to the west. Similarly, I find the proposed spatial differentiation to be appropriate, with the area of the embankment within the subject site at the northern end being much narrower and the majority of the western boundary being to the south of the 'northern most point' of Area A.

137. I do not consider it appropriate to separately reference *"courts or arenas for sporting or recreational activities."* Any buildings or structures associated with such facilities would be captured by the condition in any case. Sport and Recreation Activities are not relevant to the effects of a residential dwelling and are subject to a specific PDP definition and provisions which would apply regardless of whether the dwelling was in Area A or Area Z.

138. In terms of proposed condition (g), section 108AA(1) of the RMA does not allow me to apply such a condition. The applicant has not agreed to the condition (s108AA(1)(a)) and none of the matters in section 108AA(1)(b) apply, including that such a condition would be not directly connected to an adverse effect of locating the dwelling in Area A. I therefore find that condition (g) as requested on behalf of the submitters cannot be lawfully imposed.

139. My decision on the amended consent notice conditions is set out condition by condition in Appendix A1.

9.2 RESOURCE CONSENT SUB22/48035.03 CONDITIONS

140. Due to the Applicant correctly separating the amended consent notice condition from the conditions proposed to be applied to this resource consent, there is a difference in numbering between the Applicant's proposed condition wording, and that proposed by Ms Manning and Ms Hooper. Numbering aside, there is full agreement between the parties for Condition 1 (as proposed by the Applicant) setting out the requirement and process for a Detailed Landscape Plan ("DLP"). There is also agreement on the wording of Condition 3 relating to the timeframes for implementation of the DLP, including maintenance and monitoring.

141. There is however disagreement on the following aspects of Condition 2 (using the Applicant's numbering):

    a. Clause (a)(i) which applies adjacent to the boundary closest to 247B Weld Road Lower, being the Hackling property (the actual boundary is separated from this property by the accessway to the Dinnis / Frost property).

        i Firstly, the wording proposed by Ms Manning and Ms Hooper includes a bullet point stating *"the Poplar shelterbelt shall be removed"*, the Applicant's wording does not include that requirement.

ii There is general agreement to a double row of mixed native evergreen planting at the top of the embankment for the extent of the built form of the dwelling and ancillary buildings with some minor variation in wording.

iii The Applicant has proposed a requirement for the species planted to be such that typically do not grow higher than 5m. This is in response to Ms Hoper's originally proposed condition for a maximum height plane of 3m from the top of the embankment. Ms Hooper's post hearing conditions has now amended the height plane to 5m.

b. Clause (a)(ii) which applies to the boundary with 247D Weld Road Lower, the Dinnis / Frost property. All three versions of the proposed conditions incorrectly reference this adjoining property as 263 Weld Road Lower, which is the Applicant's site. I have corrected this in Appendix A2 to this decision. There is disagreement on the following wording in relation to this boundary:

i Once again, the wording proposed by Ms Manning and Ms Hooper includes a bullet point stating *"the Poplar shelterbelt shall be removed"*, the Applicant's wording does not include that requirement.

ii The Applicant and Ms Hooper include wording requiring *"A double row of mixed native evergreen planting"* where as Ms Manning refers to a 5m wide strip of such planting. Each version of conditions uses different wording to define the required length of this shelter belt.

c. Clause (a)(iii) applies to a condition proposed by both Ms Manning and Ms Hooper, to the eastern part of the site adjoining 271 Weld Road Lower, being the Sheffield property, and stating: *"At or near the boundary the Poplar planting shall be removed."* The Applicant's do not include that condition.

d. Clause (a)(iv) (Manning / Hooper) or (a)(iii) (Applicant) applies to the eastern side of Area A (the dwelling location) where there is agreement to wording requiring that the existing broadleaf hedge (or similar) is retained. Both Ms Manning and Ms Hopper include an additional point requiring *"isolated mounding and planting of a line of clear-stemmed, pleached Hornbeam trees (or similar)."* The Applicant's conditions do not include this requirement.

e. Clause (a)(v) (Manning / Hooper) or (a)(iv) (Applicant) applies to the extent of the site within Land Covenant Area Y. Both Ms Manning and Ms Hooper have agreed to the wording proposed by the Applicant at the hearing.

f. Clauses (b), (c) and most of clause (d) are agreed to. Clause (d) relates to a maintenance plan and tasks and Ms Hooper's proposed condition also seeks to add that in addition to the required planting, the maintenance be applied to *"the embankment Western / Southwestern site boundary facing Lot 2 DP 432478 (247B Weld Road Lower)",* which is the Hackling property. Clause (e) which

requires that the draft DLP be provided to the submitters for comment has been agreed to in each of the proposed condition sets.

142. The final area of disagreement relates to an additional condition suggested by Ms Hooper which would require a no complaints covenant to be registered on the Applicant's title in favour of each of the five submitter properties. This is not agreed to by the Applicant.

Consideration

143. Regarding Clause (a)(i) and the boundary closest to the Hackling property (247B Weld Road Lower) I have already commented that I have determined the removal of the Poplar shelterbelts where they are near to the submitters residences to be an appropriate condition. Removal of the Poplars aside, I find that the wording proposed by the Applicant is appropriate and that there is no disagreement on the intent of that wording.

144. My findings are similar for the remainder of the DLP conditions set out above, that I agree it is appropriate to require the removal of Poplar shelterbelts with the potential to adversely affect the neighbouring submitters (see paragraph 94 above), but other than that, subject to minor details I generally agree that the Applicant's proposed condition set is appropriate.

145. I find the 'no complaints covenant' in Ms Hooper's proposed condition set to be an *Augier* condition that is not accepted by the Applicant and cannot therefore be imposed.

146. My findings on the conditions to be applied to resource consent SUB22/48035.03 are as set out in Appendix A2.

10. DETERMINATION

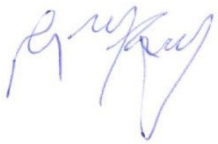
147. Pursuant to the powers delegated to me by the New Plymouth District Council under section 34A of the Resource Management Act 1991, I record that having considered the application documents, the submissions, the Section 42A Report, the expert evidence and legal submissions, and having considered the various requirements of the RMA, I find that:

    a. The actual and potential adverse effects of the application, are suitably avoided, remedied or mitigated with the imposition of the conditions in Appendices A1 and A2; and

    b. The application is consistent with the relevant provisions of the Proposed New Plymouth District Plan, and the Regional Policy Statement for Taranaki.

148. I therefore **grant** subject to the conditions in Appendices A1 and A2, the application lodged by Heinrich and Sophie Fourie (SUB22/48035.03) to vary a condition specified in consent notice 2565106.1 to change the habitable dwelling location, at 263 Weld Road Lower, Oakura, being legally described as Lot 2 DP 582431 (RT 1090181).

Signed by Independent Commissioner



Philip McKay

Dated: 21 August 2025

APPENDIX A

Conditions of Consent –
SUB22/48035.03

APPENDIX A1 – DECISION CONDITIONS – CONSENT NOTICE 12565106.1

Consent Notice 12565106.1 is varied to read:

a. A maximum of one habitable dwelling shall be permitted on Lot 2 ~~LT~~ DP 582431. This building shall be located within the Area marked ~~'Z'~~ 'A' on Lot 2 ~~LT~~ DP 582431 as shown on the Site Plan by BTW Company (and marked 'Proposed Covenant Area'), 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 ~~1~~ 2 ~~LT~~ DP 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, patios, courtyards, 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]

APPENDIX A2– DECISION CONDITIONS – RESOURCE CONSENT SUB22/48035.03

Resource Consent SUB22/48035.03 is 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):

         - The Poplar shelterbelt shall be removed.

- A double row of mixed native evergreen planting within 3 m of the existing Poplar shelterbelt (to be removed) 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 native 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 (247D Weld Road Lower):

- The Poplar shelterbelt shall be removed.
- A double row of mixed native evergreen planting within 3 m of the existing Poplar shelterbelt (to be removed), 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 part of site adjoining Lot 3 DP 582431 & Lot 1 DP 315057 (271 Weld Road Lower):

- The Poplar planting near the boundary shall be removed.

iv. 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.

v. 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 (referred to in condition 2(a)(iv) above) 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 & Lot 1 DP 315057),

   ii. 247D 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.

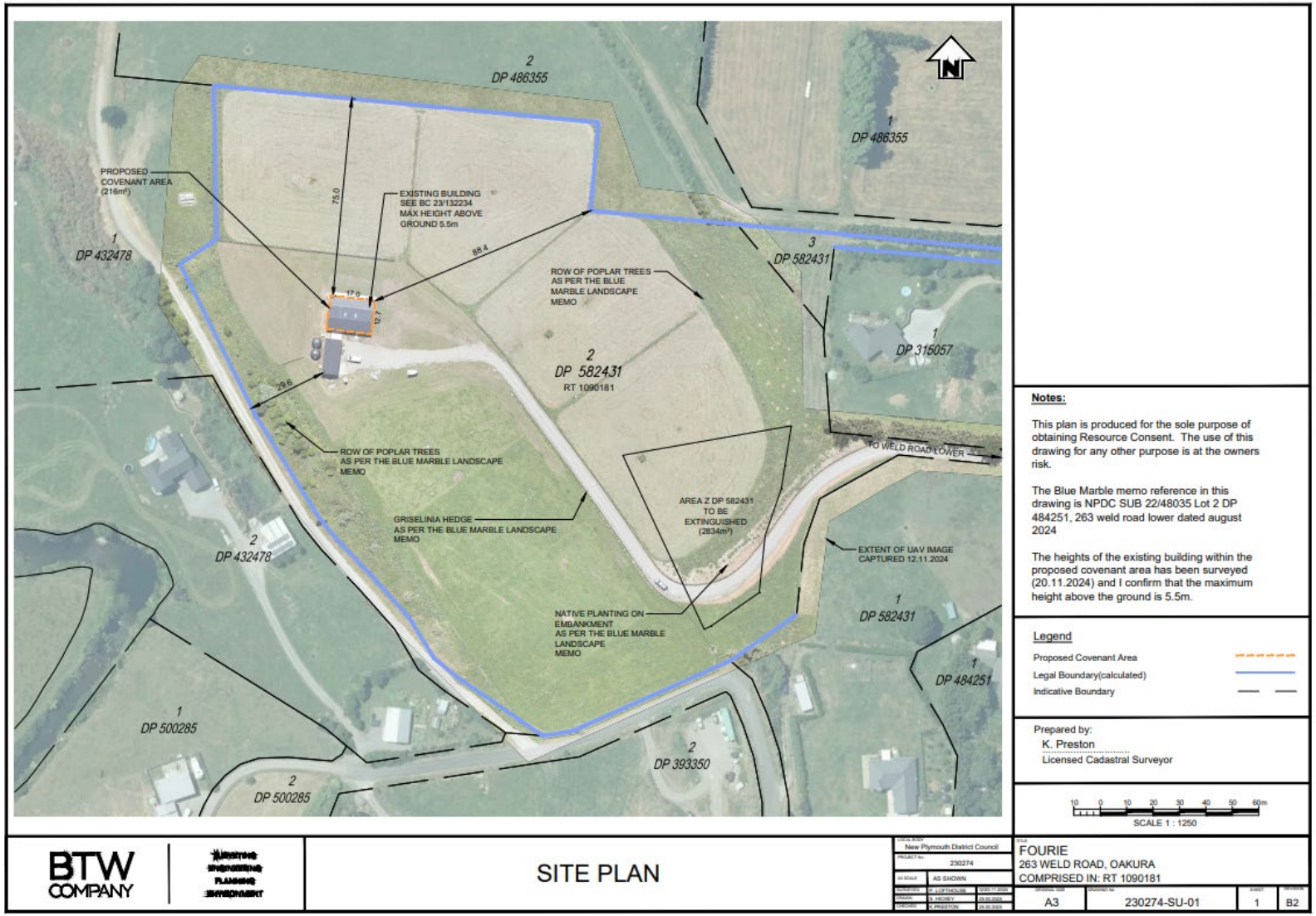
   c. The Consent Holder shall contact Council's Monitoring and Enforcement Officer within two (2) weeks of planting being fully implemented so the initial monitoring visit can occur.

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.

This decision refers to the Plan shown below, where the area labelled 'Proposed Covenant Area' = 'Area A' as referenced in the conditions.



Schedule 1 – Summary of Evidence (SUB22/48035.03)

Evidence for the Applicant – Heinrich & Sophie Fourie

1. Heinrich and Sophie Fourie ("the Applicant") were represented by legal counsel **Mr SJ Mutch** (Chancery Green) who presented opening submissions (that were also provided in writing at the hearing[1]), followed by a reply in writing after the adjournment of the hearing.[2]

2. In accordance with the directions set out in the notice of hearing,[3] all expert evidence for the Applicant was pre-circulated on 30 June 2025, and supplementary statements of evidence were provided at the hearing.

3. Mr Mutch referenced in his legal submissions, the following cases: *Brial v Queenstown Lakes District Council [2021] NZHC 3609; Green v Auckland City Council [2013] NZHC 2364; Ballantyne Barker Holdings Ltd v Queenstown Lakes District Council [2019] NZHC 2884; Waimarino Queenstown Ltd v Queenstown Lakes District Council [2024] NZEncC 176; Frost v Queenstown Lakes District Council [2021] NZHC 1474; Foster v Rodney District Council [2010] NZRMA 159 (EnvC); Drach v Tasman District Council [2021] NZEncC 118; Strata Title Admin Body Corporate 176156 v Auckland Council [2015] EnvC 125; Colonial Homes Ltd v Queenstown-Lakes District Council W 104/95 (PT); Hinsen v Queenstown-Lakes District Council [2004] NZRMA 115; NZ Suncern Construction v Auckland Council 3 ELRNZ 230 (HC); Blueskin Energy Ltd v Dunedin City Council [2017] NZEnvC 150; Endsleigh Cottages Ltd v Hastings District Council [2020] NZEnvC; Beacham v Hastings District Council, ENC Wellington W075/09; Dye v Auckland Regional Council [2002] 1 NZLR 337, (2001) 7 ELRNZ 209, [2001] NZRMA 513 (CA); Wellington Regional Council (Bulk Water) v Wellington RC EnvC W003/98; Queenstown Lakes District Council v Hawthorn Estate Limited [2006] NZRMA 424; Guardians of Paku Bay Assn Inc v Waikato Regional Council 92011) 16 ELRNZ 544, [2012] 1 NZLR 271 (HC); Remediation (NZ) Ltd v Taranaki Regional Council [2024] NZEnvC 213*.

4. Mr Mutch traverses the following matters in his legal submissions: a summary of the Applicant's situation and proposal, comment on the submissions received on the application, the legal framework under which the application must be considered, consideration under section 104 of the RMA, the issue of retrospectivity, matters arising from the evidence of Ms Hooper on behalf of the submitters, comment on conditions, and his principle submission on behalf of the Applicant's. I comment on the points made in the body of this decision.

5. The following expert evidence was presented on behalf of the Applicant, listed in order of appearance at the hearing.

6. **Mr Richard Bain** (Landscape Architect, Registered Member of NZILA, and owner of Bluemarble Landscape Architects). Mr Bain presented a supplementary statement of evidence at the hearing which provides a summary of his primary statement and comments on the conditions

[1] Dated 15 July 2025.
[2] Dated 31 July 2025.
[3] Dated 5 June 2025.

attached to Ms Hooper's statement of evidence on behalf of the submitters. He highlighted concerns regarding the planting of a 25m wide band of native vegetation along several boundaries and limiting that vegetation to a maximum of 3m in height. He also raised issues with the proposed condition for ongoing landscape maintenance beyond the establishment period.

7. Mr Bain's statement of evidence[4] describes the proposal and landscape setting and summarises the potential landscape and visual amenity effects. Mr Bain's evidence also responds to the submissions and the Council Officer's Report. At Annexure A, Mr Bain attaches a summary table assessing the adverse visual effects from neighbouring properties reproduced from his May 2025 Landscape Memo.

8. **Ms Jennifer Carvill** (Planner, Technical Director - Tonkin & Taylor Limited, and Member of New Zealand Planning Institute). Ms Carvill presented a supplementary statement of evidence at the hearing which provides a summary of her primary statement and responds to the statement of evidence from Ms Hooper. The matters covered include the Proposed New Plymouth District Plan ("PDP") compared to the Operative New Plymouth District Plan ("ODP") and the consistency of the proposal with PDP policy direction, cumulative effects, assessment against statutory documents and consent conditions. Specific comment is also provided on the water easement applying to the subject site.

9. Ms Carvill's statement of evidence[5] provides background context relating to the original subdivision and consent notice and the proposal to vary that consent notice. It includes a site description and summarises the change in circumstances that has led to the application. Ms Carvill sets out the applicable statutory framework and incudes an assessment of effects resulting from the proposed variation of consent notice and an assessment against the relevant objectives and policies of the Taranaki Regional Policy Statement ("TRPS") and PDP. The assessments provided include reference to the section 42A Report ("S42A Report") prepared on behalf of New Plymouth District Council ("NPDC"). Ms Carvill also comments specifically on the conditions recommended in the S42A Report and recommends amendments to a number of those conditions, and appends a consolidated amended condition set as Attachment A.

Submitter's Presentation

10. The five submitters being N & A Hackling, S & A Blair, J Dinnis & C Frost, R & L Shaw, and G & K Sheffield, were represented by planning consultant **Ms Kathryn Hooper** (Planner, Principal Planner & Executive Director - Landpro Limited, and Member of New Zealand Planning Institute). Ms Hooper spoke to her pre-circulated statement of planning evidence.[6]

11. Ms Hooper's statement of planning evidence provides a background to the original subdivision and current proposal and the submissions lodged. Ms Hooper provides a statutory planning

[4] Dated 30 June 2025.
[5] Dated 30 June 2025.
[6] Dated 7 July 2025.

assessment of the application and comments on the s42A Report and on the Applicant's evidence relevant to planning matters. Ms Hooper covers both effects on the environment and what she considers to be the relevant statutory documents. Ms Hooper cites (and provides copies of) two High Cout cases as being relevant to applications to remove or vary consent notices being: *Ballantyne Barker Holdings Ltd v Queenstown Lakes District Council [2019] NZHC 2844,* and *Frost v Queenstown Lakes District Council [2021] NZHC 1474*.

12. Ms Hooper appends the following documents to her statement of evidence: Original subdivision consent application resulting in the consent notice, the planners report and Council decision on that application, independent commissioner's decision on a recent retrospective resource consent application (Roach & South Taranaki Trustees), amended condition set, and the two High Court decisions referred to above.

13. Three of the submitters spoke at the hearing and their presentations are summarised below.

14. **Mr Nick Hackling** presented a written statement[7] at the hearing in support of the submission in opposition from himself and his wife Abi Hackling (being the owners, in conjunction with a legal trustee, of 247B Weld Road Lower). The statement sets out the building development history on the Hackling property (which includes their home and a second dwelling) and comments on giving written approval to the subdivision that created the subject site. It also comments on interaction with the Fourie's in the lead up to the application, the s42A Report, and the Applicant's evidence. Mr Hackling's statement goes on to set out the effects of the dwelling on his family and other neighbours and his conclusions. The statement attaches an Instagram Post regarding the Fourie's house; various items of e-mail correspondence regarding the proposal between the Applicant and consultants acting on their behalf, the Council and neighbours from 8 May 2023 – 19 February 2025; and extracts from the Licensed Building Practitioner Handbook.[8]

15. **Ms Rebecca Shaw** presented a written statement[9] at the hearing in support of the submission in opposition from herself and her wife Leeanne Shaw as the owners of 255 Weld Road Lower. The statement describes their property and the renovations that they have been undertaking to the dwelling. It sets out their understanding of the subdivision that created the subject site and the information that they were provided with in a Land Information Memorandum ("LIM") from NPDC. The statement comments on the lead up to the Fourie's application and interactions with them during that period. Ms Shaw's statement provides a response to the S42A Report and the Applicant's evidence. It also sets out the effects of the application on her family and her conclusions on the application. Ms Shaw's statement attaches the full NPDC LIM Report (LIM24/115496)[10] for 255 Weld Road Lower.

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[7] Dated 15 July 2025
[8] www.lbp.govt.nz/assets/lbp/documents/lbp-handbook.pdf
[9] Dated 15 July 2025
[10] Issued 14 June 2024

16. **Mr Greg Sheffield** spoke to his submission at the hearing, which was also on behalf of his wife Katy Sheffield as the owners of 271 Weld Road Lower. The points made by Mr Sheffield related to the original subdivision that established the subject site and his negotiated written approval, initial discussions with the Fourie's on their proposed dwelling, and his frustrations with the current application and the effect on the outlook from 271 Weld Road Lower. Mr Sheffield advised that if the outcome was for consent to be granted (which he remains in opposition to), he would like the poplar trees removed as a condition of consent as in time they would block the views from his property.

Expert Report Authors on behalf of New Plymouth District Council

17. Following the submitter presentations, **Mr Brad Dobson** (landscape architect, BLAC Ltd, and registered member of the New Zealand Institute of Landscape Architects) provided comments and answered questions on his landscape and visual effects evidence circulated as an appendix to the NPDC's Section 42A Report for the hearing. Mr Dobson's evidence included consideration of the site and surrounds, the relevant statutory provisions, the background to the application and the current proposal, comment on the various landscape and visual effects assessments prepared by Blue Marble (authored by Mr Bain) on behalf of the Applicant, and consideration of each of the five submissions received including an assessment of the landscape and visual effects of the proposal as experienced from each of the submitter's properties and from the public viewpoints of Weld Road Lower and Lower Timaru Road.

18. Verbal comments from, and my questions of, Mr Dobson at the hearing focused largely on existing and proposed mitigation plantings and alternative mitigation plantings requested by the submitters (in the event that consent is granted), including the removal of existing recently planted poplar shelter belts.

19. The Section 42A reporting officer, **Ms Jacqui Manning** (Senior Consultant Planner, Resource Management Group Ltd) also provided a 'S42A Summary Statement'[11], circulated the day prior to the hearing.[12] In that statement Ms Manning provides an overview of her S42A Report, a preliminary response to matters raised in the pre-circulated evidence on behalf of the Applicant and submitters, and a revisited condition set.[13]

20. At the hearing Ms Manning provided an overview of the issues, including matters arising at the hearing, and responded to my questions. In her comments Ms Manning acknowledged the frustrations shared by submitters with NPDC in responding to complaints and their compliance and enforcement action regarding the Applicant's building. Ms Manning noted that her engagement was only in regard to the RMA proceedings of the retrospective resource consent for a variation of the consent notice, as NPDC wanted an independent planner to undertake

[11] Dated 14 July 2025.
[12] I was advised by Ms Straka (Manager Governance, NPDC) that this was with the agreement of the Applicant and submitters.
[13] Stating that the response is preliminary as she wishes to respond after having the opportunity to hear from the Applicant and submitter and questioning of them at the hearing.

that process. Ms Manning noted that she has considered the prior subdivision in her S42A Report. Given the discussions on the poplar shelterbelts at the hearing, Ms Manning noted that if consent is declined the poplar trees would remain as permitted planting. If consent is granted, however, conditions can be set requiring the removal of the poplar trees as part of the overall landscape mitigation plan in mitigating the effects of the dwelling location.

21. Ms Manning's responses to my questions are covered in the body of the decision.

Reply Submissions and Evidence Following Hearing Adjournment

22. The draft condition sets circulated following the hearing and the legal submissions in reply on behalf of the Applicant, are not summarised in this schedule and are rather referred to in the body of the decision.