BEFORE INDEPENDENT COMMISSIONER

AT NEW PLYMOUTH

Under the Resource Management Act 1991

In the Matter of an application by Heinrich and Sophie Fourie under s221(3) of the RMA to vary a consent notice condition applying to the property at 263 Weld Road Lower, Oakura

Statement of Planning Evidence of Kathryn Hooper for the following Submitters

N&A Hackling

S&A Blair

J Dinnis & C Frost

R & L Shaw

G & K Sheffield

Date 7 July 2025

EXECUTIVE SUMMARY

Introduction

1. My name is Kathryn Louise Hooper.

2. I have a Masters in Applied Science (Natural Resource Management) from Massey University and a Graduate Certificate in Environmental Management from Central Queensland University.

3. I am a Principal Planner and Executive Director at Landpro Limited and have been a consulting Planner based in New Plymouth since 2001. Prior to this I worked for Wellington and Taranaki Regional Councils. I have been a full member of the New Zealand Planning Institute since 2012.

4. The majority of my work is here in Taranaki though Landpro operates throughout New Zealand. I grew up in the New Plymouth District.

5. My experience includes consenting subdivision and land use activities under the New Plymouth District Council (NPDC) Plans and other District Plans in New Zealand; private plan changes; feasibility, consultation and land access negotiations. My previous roles have involved enforcement activities under the RMA for Wellington and Taranaki Regional Councils.

6. I was engaged by the submitters in April 2025 to assist them with their submissions.

7. My involvement has been:

    a) Review of the application dated 26 August 2024 and associated plans, and the additional information dated 31 March and 19 May 2025 and associated plans.

    b) Review of the notification decision and application.

    c) To assist in the preparation of the submissions.

    d) Review of the s42A Report prepared by Ms Manning.

    e) Review of the evidence for the applicant, in particular that relating to planning matters.

8. In preparing this evidence, I rely on and refer to the evidence of the submitters.

Code of conduct

9. Although this is a Council level hearing, I confirm that I have read the Code of Conduct for Expert Witnesses as contained in the Environment Court Practice Note 2023, and I agree to comply with it in giving this evidence. I confirm that the issues addressed in this brief of evidence are within my area of expertise.

Background

10. The five neighbouring parties I represent have submitted against the subject application to vary the consent notice. They are listed in paragraph 3.7 of the s42A report, and located as shown in Figure 2 of the s42A report.

11. They oppose the application for a retrospective consent to authorise the dwelling that is now located outside of the authorised building platform 'Area Z'. The current location of the dwelling is referred to as 'Area A'.

12. Affected persons[1], including the 5 submitters, were notified on 3 April 2025.

13. The applicants propose to convert a permitted existing shed located within 'Area A' on the property to a dwelling. Before any habitable building can be lawfully located on 'Area A', the consent notice must be varied.

14. The shed has already been converted, and the applicant is living in it unlawfully. There does not appear to be disagreement in regard to the retrospective nature of this application.

15. The submitters have detailed their concerns about how this 'shed' has come to be a dwelling.

16. I agree with the submitters that there appears to have been a deliberate and staged process to initially establish a shed, then rely on the presence of a shed in the environment to justify conversion to a dwelling from a landscape

[1] *Identified in the Notification Decision Report prepared by Ms Manning for the NPDC, dated 30 December 2024, see Appendix B to the s42A report.*

and visual perspective. It is apparent to me and the submitters that it was always intended that the 'shed' become a dwelling and it has been designed and constructed to residential dwelling standards from the outset.

17. While the NPDC is entitled to consider a retrospective application, I note they cannot give any weight to the fact that the dwelling exists in this location, and I discuss this further from paragraph 26 below. The application, and any associated mitigation must be considered as if the dwelling does not exist and the fact that it is retrospective does not stop the Council declining this application.

The submissions

18. The submitters submit that;

a) They were instrumental in the establishment of the original consent notice, which established 'Area Z' for the habitable dwelling associated with the lot to protect and maintain rural character and amenity at the time the original subdivision was granted.

b) Since the title was issued for the subdivision, they have relied on, and are entitled to continue to rely on the conditions carried forward in the current consent notice in developing, and living on their own properties.

c) The proposal to place the dwelling on 'Area A' negatively impacts the character of the area and the amenity of their properties, compared to what they agreed to during the original subdivision, being 'Area Z'.

d) Actions of the applicant to date and the disregard for the clearly outlined conditions attached to the title of their land has significantly undermined the process that the parties engaged in to establish this development and if endorsed by the Council this will set a precedent for others to disregard consent conditions.

e) The proposal undermines the submitters ability to place reliance on the original consent conditions and consequent consent notice, and the process they went through, (and to which the Council agreed), to protect the rural character and amenity of the site and their

experience of these values. The agreed to and consented development appropriately managed these effects through the original subdivision consent.

f) The mitigation measures put forward include elements which will result in further adverse effects, namely shading from large, inappropriate Lombardy poplars which have been planted.

g) The effects of a placing a dwelling outside of 'Area Z' will be a significant deviation from the intended nature and character of the original subdivision.

h) Effects that they will experience that are associated with living activities being allowed in 'Area A' will be significant compared to 'Area Z' and have not been mitigated.

i) The proposal is inconsistent with: the purpose, principles, provisions and Part 2 of the RMA 1991, the Taranaki Regional Policy Statement 2010 and the Proposed District Plan 2023.

19. The relief sought in all five submissions is the application be declined in its entirety and any dwelling and associated living activities be required to locate within 'Area Z' as required in the original consent notice, and agreed as part of the original consent to subdivide the land. For the avoidance of doubt, I confirm that this remains the case upon review of the s42A report and the evidence received from the applicant.

Scope of evidence

20. In my evidence, I provide a planning assessment for the submitters by:

a) Providing a statutory planning assessment and provide planning context, including providing reference to key Environment Court case law which provides crucial context in relation to consent notices;

b) Responding to the s42A report prepared by Ms Manning, where these matters have not already been addressed;

c) Responding to the evidence of the applicant, where this is relevant to my field of expertise;

d) Providing a full policy assessment that includes assessment of the activity against the relevant statutory documents;

e) Summarising my conclusions.

Summary of evidence

21. I disagree with the recommendation in the s42A report to grant this application because the application, if granted, will result in:

a. Precedent effects.

b. Undermining of the ability for the community to rely on existing and future consent notices (and conditions), thus undermining the integrity of the District Plan and planning decisions.

c. Adverse effects on the environment compared to the status quo, which will be noticeable and inappropriate.

d. Cumulative adverse effects on the environment.

22. Accordingly it is my opinion that this application should be declined in its entirety.

Introduction to the subject site & planning context

23. The site is zoned Rural Production. I generally agree with the site description, summary of the application and description of the environment provided in the s42A report.

Figure 1. Zoning of subject site (Green = Rural production) – PNPDP (Appeals Version, sourced June 2025)

24. Ms Manning describes the surrounding environment in the s42A report and I generally concur with this, while noting that submitters have provided further detail for the commissioner in their verbal and written submissions.

Statutory Assessment & Framework

25. I agree that the activity is discretionary under s221(3) of the RMA, and the commissioner is required to have regard to the matters in s104 of the RMA, subject to Part 2, in making its decision.

Retrospective applications for consent

26. In this section I discuss retrospective applications for consent, and reference the same material that was considered by the NPDC in relation to the recent case before the independent commissioner of an application by Bryan and Kim Roach & South Taranaki Trustees Limited for construction of a new dwelling and associated fencing and retaining walls (retrospective) at 24/26 Woolcombe Terrace, New Plymouth. A copy of this decision is attached as **Appendix 2.**

27. Paragraph 22 in this decision lists the relevant cases that provided key background to the decision in relation to consideration of retrospective consent applications.

28. Paragraph 46 summarises how this decision considered the principles that apply to retrospective consents, stating that:

46. Having carefully considered the legal submissions of Mr Grieve and Mr Cameron on the principles applying to retrospective resource consents I find that in the first instance I should assess the application on its merits under sections 104 and 104B of the RMA as if the building were proposed, rather than built. If I were to find that at least some part of the building needed adjusting to be more, or fully, compliant, or that the application should be declined, in appropriately avoiding, remedying or mitigating adverse effects, then I should consider the principle of 'proportionality'.

29. To provide further context from these principles:

a. There should be no presumption that what exists should remain, simply because it would be difficult or costly to remove it;

b. The same level of rigor is required in the assessment of effects as if the application were 'greenfields'.

30. One advantage with retrospective consent is that is that we do not have to 'imagine' what the end result might be.

31. That the dwelling exists in this location, and is being occupied as a habitable dwelling by the applicant already, has given the five submitters a very clear understanding of what the effects of location a dwelling outside of the consented building platform are, compared to what was agreed as being acceptable through the consenting process.

Removal or Variation of Consent Notices

32. In my opinion the s42A report does not sufficiently consider the context of the previous consent process and how the conditions were reached or the environmental values that the original consent sought to protect.

33. My overarching concern with the application, and the s42A report, is the disregard for the previous planning decision for SUB22/48035 which saw the imposition of the consent notice requiring the habitable dwelling to be located within 'Area Z'. A copy of the original application for the subdivision is attached as **Appendix 1**.

34. The consent notice that is subject to this application was critical in the original decision to grant the subdivision consent (see **Appendix 2**).

35. Three of the submitters[2] on this application were affected parties to the original application. They worked with the original applicant[3] to design a subdivision which addressed their concerns about rural character and amenity and ensuring the decision maker had sufficient confidence that the effects were being appropriately managed. This enabled the granting of the consent.

36. One submitter[4] was not considered affected, as there were no dwellings on their property at the time of the original subdivision.

37. The fifth submitter[5] purchased their land in July 2024 after the subdivision occurred. The original owner of this property[6] was an affected party to the original application.

38. The submitters have a right to rely on the very recent decision, and the consent notice that was imposed to secure the key mitigation measures that would occur after the issue of title.

39. They have relied on this consent notice and what is allowed to occur on the neighbouring property when designing and laying out their own properties and making decisions on their own land. There is value in the consent notice for them, as it sets clear constraints, protects their properties from inappropriate development and avoids and mitigates adverse effects on rural character and amenity.

40. The submitters invested the time and effort with the original land owner to reach a consensus on how the original land could be subdivided and developed.

41. The NPDC has relied on this consent notice in granting consent for the original, non-complying subdivision. The restriction on the number of

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[2] N & A Hackling, G Sheffield and S & A Blair
[3] G & T Beaton
[4] J Dinnis and C Frost
[5] R & L Shaw
[6] Bentall

dwellings and the location if the dwelling was cited as grounds for passing the non-complying gateway test, ensuring consistency with Council policy and objectives, and avoiding and mitigating adverse effects on rural character and amenity.

42. For the new landowner to amend a very recent consent notice, which parties have relied on in making decisions on their properties, and which the NPDC has relied on to grant a subdivision in the first place, must therefore require careful consideration and significant justification.

43. My question was whether the submitters (and council) are entitled to rely on the original decision, and in particular, the consent notice imposed as a critical part of that decision. On examination of relevant case law it is my opinion that they most certainly are.

44. The below paragraphs reference case law, and I am not a lawyer. I therefore keep my comments within my area of expertise, which is planning, and note it is not unusual for planners to reference case law to seek guidance in making decisions and recommendations. I also provide full copies of the cases referenced so that the Commissioner may review these and make their own assessment and draw their own conclusions. Below I provide my own planning assessment based on relevant case law that I have sourced.

45. The key case I found is *Ballantyne Barker Holdings Ltd V Queenstown Lakes District Council*[7]. This appears to be a key case that is commonly referenced relating to consent notices.

46. In this case, an Environment Court decision was appealed to the High Court because (among other reasons) the Environment Court had asserted that consent notices could not be relied upon to mitigate effects because they are relatively easy to amend. The High Court decision found there was not sufficient evidence to enable the Environment Court to support a conclusion of this nature[8] and their reasoning for this is directly relevant to the current application.

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[7] *Ballantyne Barker Holdings Ltd V Queenstown Lakes District Council [2019] NZHC 2844 [4 November 2019], at para 41.*
[8] *Ballantyne Barker Holdings Ltd V Queenstown Lakes District Council [2019] NZHC 2844 [4 November 2019], at para 41.*

47. The High Court found that this statement in the original Environment Court Decision contradicted the reliance that the Environment Court has repeatedly placed on the use of consent notices in its decisions.

48. At paragraph 41, *Ballantyne Barker Holdings Ltd V Queenstown Lakes District Council*[9] states;

> [41]……Furthermore, it contradicts the reliance that the Environment Court has repeatedly placed on the use of consent notices. For example, the Court in *McKinlay Family Trust v Tauranga City Council* stated:
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> > "… we have concluded that the ability of people and communities to rely on conditions of consent proffered by applicants and imposed by agreement by consent authorities or the Court when making significant investment decisions is central to the enabling purpose of the Act. Such conditions should only be set aside when there are clear benefits to the environment and to the persons who have acted in reliance on them".

49. Paragraph 42 of *Ballantyne Barker Holdings Ltd V Queenstown Lakes District Council*[10] states:

> [42] In *Foster v Rodney District Council*, the Environment Court noted that the following criteria may have some relevance in considering whether to vary or cancel a consent notice:
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> a) the circumstances in which the condition was imposed;
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> b) the environmental values it sought to protect; or
>
> c) pertinent general purposes of the Act as set out in sections 5-8.

50. These paragraphs in *Ballantyne Barker Holdings Ltd V Queenstown Lakes District Council*[11] lead on to paragraphs [44] and [45] which state, in relation to changing consent notices;

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[9] *Ballantyne Barker Holdings Ltd V Queenstown Lakes District Council [2019] NZHC 2844 [4 November 2019], at para 42.*
[10] *Ballantyne Barker Holdings Ltd V Queenstown Lakes District Council [2019] NZHC 2844 [4 November 2019], at para 42.*
[11] *Ballantyne Barker Holdings Ltd V Queenstown Lakes District Council [2019] NZHC 2844 [4 November 2019], at para 42.*

> [44] In considering such applications this Court has emphasised that "good planning practice should require an examination of the purpose of the consent notice and an inquiry into whether some change of circumstances has rendered the consent notice of no further value".
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> [45]The case law makes it clear that because a consent notice gives a high degree of certainty both to the immediately affected parties at the time subdivision consent is granted, and to the public at large, it should only be altered when there is a material change in circumstances (such as a rezoning through a plan change process), which means the consent notice condition no longer achieves, but rather obstructs, the sustainable management purposes of the RMA. In such circumstances, the ability to vary or cancel the consent notice condition can hardly be seen as objectionable.

51. From a planning perspective, I would add to this that the only way for a consent notice to be amended in the absence of a material change in circumstances rendering the consent notice no longer fit for purpose, would be if all originally affected parties or new owners of the originally affected properties gave their approval to the change and the council did not consider that there were effects on the wider community.

52. In *Frost v Queenstown Lakes District Council [2021]* [12], the same Judge reasserts this position, and I have provided a copy of this case also for the Commissioner, in **Appendix 5**.

53. Consent notices are important. They establish legally binding conditions that must be complied with on a continuing basis by landowners, both current and future, following a subdivision. During subdivision, often mitigation measures are agreed which need to extend beyond the 'life cycle' of the subdivision consent, given subdivision consents are 'given effect to' once title is granted.

54. Consent notices are the mechanism by which measures that are agreed during the original subdivision are carried down to the title that the subdivision creates. The need to impose ongoing obligations on the owners

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

of subdivided sites is expressly provided for through the consent notice mechanism in s 221 RMA.

55. The High Court in *Frost v Queenstown Lakes District Council [2021] NZHC 1474 at [85]* stated:

> [85] Consent notices must be imposed by a territorial authority when granting a subdivision consent where there is a condition to be complied with on a continuing basis by the subdividing owner and subsequent owners.[1] The consent notice creates an interest in the land, can be registered under the Land Transfer Act 2017 and will bind subsequent owners. The purpose of a consent notice is to ensure future land owners have notice of, and are bound by, subdivision consent conditions that have ongoing effect.

56. It therefore stands to reason that an application to amend/vary a consent notice must have regard to the original reasons, or purpose, for which it has been put in place.

57. Referring back to paragraph 50, there is no evidence of the identified 'good planning practice' of examining the purpose of the consent notice, nor any inquiry into whether there has been a change in circumstances that render the consent notice of no further value within the assessment of effects provided by the applicant, nor in the s42A Report or supporting information, nor in the evidence provided by the applicants experts.

58. The s42A report[13] admits to only addressing the prior application in a limited manner, as the current application to vary the consent notice location can be applied for and considered on its own merit. The limitations and inconsistency with good practice of taking this approach are clearly highlighted above.

59. In my opinion consideration of the application and decision which led to the creation/imposition of the consent notice is not negotiable.

60. Simply performing another assessment of effects on a new location is not sufficient.

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[13] Paragraph 4.35

61. We cannot revisit the original application and make another decision on whether the subdivision of the land is appropriate. That decision has been made. The NPDC therefore uphold that decision, and only change it if absolutely certain that it is appropriate to do so.

62. Establishing a 'dwelling' in a manner which contravenes a consent notice, then retrospectively applying for consent, shows that the applicant has no regard for the previous processes or the potential for their activities to affect others.

63. The applicant purchased the land in January 2023. The applicant was made aware of the consent notice and the reasons for it by the submitters when they began trenching electricity to the 'shed site' in February 2023. It has been made abundantly clear to the applicant that they cannot live on 'Area A'. However, they have continued, in breach of the RMA[14].

64. The submitters made the NPDC aware that the applicant intended to live in the 'shed', and then made them aware that the applicant was living in the 'shed'. They have been living there in breach of the Act since October 2024. The NPDC have taken no enforcement action.

65. The community relies on consent notices and it naturally stands that changing them should be subject to significant scrutiny. In my opinion it is not possible to fully consider the effects of amending a consent notice without first understanding its original purpose and intent and then making assessment as to whether this purpose and intent still stands.

66. I therefore provide this assessment below.

The purpose of the original consent notice

67. The original consent notice was registered on the title in November 2022. At the time the applicant moved into the dwelling (October 2024), it was less than two years old.

68. The purpose of the consent notice was to ensure that future development on Lot 2 DP 582431 avoided and mitigated effects on the environment and

[14] S338

occurred in the manner anticipated in the original consent application, which in turn ensured the subdivision was able to avoid and mitigate potential and actual adverse effects on rural character and amenity.

69. The assertion made in section 4.2 of the current application is incorrect and misleading. This states:

> *'The original purpose of the building platform Area Z was suggested by the original developer of the site, Graeme and Tracey Beaton, who still own the land above at Lot 1 DP 582431 and was not a request from any neighbouring landowner'.*

70. The consent notice was infact a direct result of feedback from neighbouring landowners to the original developer, and served the purpose of addressing the concerns held by them about the future location of any dwelling on the lot that would be created.

71. The adjoining owners considered that subdivision had potential to impact;

a. The overall rural character of the zone, and the immediate rural character experienced by adjoining owners;

b. The rural amenity and values which the surrounding community held in this area;

c. The risk that an inappropriately located dwelling would affect the amenity of adjoining properties - their privacy, outlook, views, peace and quiet, and way in which owners and occupiers use and live on their properties;

d. The unique characteristics of the area and landform which make up the sense of place in this location and contribute to the enjoyment of their land.

72. The involvement of neighbouring parties in the subdivision layout is confirmed and documented in section 11.4 of the original application (**Appendix 1**) which states:

> ***11.4 ALTERNATIVE LAYOUT OPTIONS***
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> *Alternative schemes have been considered but these have been refined and adapted based on frank consultation with surrounding*

neighbours. The final scheme being presented is the best layout for the site and has the full support of the landowners and the applicants.

and in section 13.3 which states:

…….The current landowners have lived on their property for many years and have opted to approach all of their neighbours who have an existing dwelling and who would potentially be the most affected by the proposal.

73. The establishment of the consent notice restricting dwellings to 'Area Z' was incorporated into the design of the subdivision as a direct result of consultation. It was relied upon from the outset by all parties (including the applicant at the time) and satisfied the adjoining affected parties in relation to the potential effects on them and was a deciding factor in them providing their written approval to the subdivision. From this point, provided the proposal was not altered, effects on them were able to be disregarded, and the subdivision application was able to proceed as non-notified.

74. The consent notice therefore also served the purpose of formalising the agreement between parties on key matters about how the allotment would be developed.

75. With reference to paragraph 13.3 of the original application, which documents the parties consulted in relation to the design of the original subdivision:

a. Three of the submitters on the subject application gave their approval on the basis of 'Area Z' – the Blairs, Hacklings and Sheffields.

b. James Dinnis and Claire Frost own Lot 1 DP 432478, which was not consulted originally as it did not have a dwelling on it at the time. They have built since, and designed the buildings on their property to have regard for the 'known' location of the dwelling on the applicants land, which is secured by the current consent notice. They believed they could build safe in this knowledge.

c. Rebecca and LeAnne Shaw now own 255 Weld Road, the previous owners of which (Bentall) gave their approval based on 'Area Z'. In purchasing the

property, they were reassured by the presence of the consent notice 'guaranteeing' the location of any future dwelling on the adjoining vacant allotment.

76. Further however, the consent notice for the most recent subdivision also had the purpose of carrying over the 'No Build Zone' that existed on the underlying title. This area is shown in the statement provided by Ms Shaw, and was contained in Consent Notice 10058782.2 (dated June 2016[15]) which was cancelled as part of the most recent subdivision.

77. In summary, the purpose of the consent notice was to ensure the previous consent notice was continued, and to document the agreement between parties about how the lot that was developed would avoid the very effects on rural character and amenity which we are discussing at this hearing. These effects were not only a concern with the most recent subdivision, but the one before that.

78. That the original parties who benefited from the consent notice have submitted against the variation is, in my opinion, significant, and demonstrates the current consent notice is still entirely relevant, and 'Area Z' is still required to mitigate effects of future development of Lot 2 DP 582431. The consent notice remains as relevant today as it was when it was originally put in place, which is not surprising to me, given it is very recent.

Change in circumstances

79. In terms of whether there has been a material change in circumstances '*which means the consent notice condition no longer achieves, but rather obstructs, the sustainable management purposes of the RMA'* (and thus renders the consent notice of no further value), it is abundantly clear that there has not.

80. The applicants purchased this property in January 2023 with full knowledge of the covenant and the requirement to build their dwelling within 'Area Z'. This is beyond doubt, as it was clear on the title. The submitters have developed their land on the understanding that the building platform on the

[15] This consent notice is included as Appendix 5 of the original application, which is attached as Appendix 1 to this evidence.

vacant neighbouring lot (which three of them gave approval to the creation of) was 'secured' by way of consent notice.

81. The applicants personal, financial or other circumstances may have changed which has resulted in them seeking this consent. However the decision to build in the wrong location without authorisation is not an accidental one. Any change in personal circumstances has no bearing on the consent notice being 'of no further value'. It is clear from the submissions that the consent notice remains of significant value to the submitters (and who were originally consulted as to its establishment) as it avoids and mitigates potential effects on them and they have made decisions on their own properties that rely on it.

82. Further, the zoning has not changed to one that is less restrictive, and in my opinion the policy framework within which such an application should be considered has become more restrictive in terms of Residential Activities within the Rural Production Zone compared to when the original consent was granted, with the directive in the PNPDP to maintain the rural character even stronger than previously.

83. The planning evidence for the applicant[16] identifies that the following changes in circumstances have occurred:

a. There has been a change in circumstances from a statutory planning perspective, with the Rural Production Zone Chapter of the PNPDP now beyond challenge.

b. There have been material changes in the existing environment, in the form of additional buildings, including the shed on 'Area A'.

c. The owners of 249 Weld Road have given their approval.

84. In my opinion the changes in circumstances put forward by the applicant are not material and in my opinion there has been no change of planning, legal or other circumstances which render the part of the consent notice that the applicant seeks to change (i.e. Area Z) of '*no further value'*.

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[16] Evidence of J Carvill, paragraphs 22-24

Summary – Original consent notice purpose and circumstances

85. With it being demonstrated that the purpose of the consent notice is still entirely relevant (potentially even more so under current policy settings than the ones that existed at the time of the original application that created it), and there have been no changes to circumstances that warrant the variation or removal of it, case law appears to support my opinion that the variation sought should not be granted.

ASSESSMENT OF EFFECTS

86. Within the context of the above, the assessment of effects under s104 becomes one of comparing the status quo, to the alternative proposition put forward in the application. The s42A Report and the applicants evidence[17] appear to consider this approach.

87. I have entered this consideration with an open mind. With the background provided by case law above, it may be possible to demonstrate that the applicant is offering to put a dwelling somewhere that equally or better avoids, remedies or mitigates effects than 'Area Z'.

88. This would, in my opinion, enable the situation to be framed as a 'change in circumstances' that 'better achieves the original purpose of the consent notice' by resulting in the same or less effects on the environment than the status quo.

89. Clearly the submitters do not believe this is the case. However, it is prudent to complete the assessment.

EFFECTS ON RURAL CHARACTER AND AMENITY

90. I agree that effects centre around rural character and amenity and boil this down to two questions;

a. Does shifting the habitable dwelling platform from 'Area Z' to 'Area A' have a similar, lesser or greater effect on the rural character of the rural

[17] Evidence of J Carvill, paragraph 10

production zone in general, and/or the character of the area when viewed from private properties and from public spaces?

b. Does shifting the habitable dwelling platform from 'Area Z' to 'Area A' have a similar, lesser or greater effect on the rural amenity enjoyed by private parties on their properties and by the public from public spaces?

91. "Rural character" is defined in the PNPDP as follows:

Rural Character: *is the combination of elements and characteristics that make an area 'rural' rather than 'urban'. Rural character includes the key elements of spaciousness, vegetation of varying types, low density built form and open space between buildings, with a predominance of primary production orientated activity as the prevailing working environment, and typically lacks urban infrastructure such as kerb and channel, street lighting, solid fences and footpaths, but can include network utilities such as telecommunications.*

92. 'Amenity values' are defined in the Act as follows;

amenity values *means those natural or physical qualities and characteristics of an area that contribute to people's appreciation of its pleasantness, aesthetic coherence, and cultural and recreational attributes'*

93. Paragraphs 4.9 and 4.27 of the s42A report summarise the key issues relating to Rural Character and Amenity in the opinion of the NPDC processing officer and I generally agree with this summary, noting the submitters, who in my opinion are in the best position to communicate their appreciation of the character and amenity of the area, have provided a great deal more context in their verbal and written submissions.

DISCUSSION - RURAL CHARACTER & AMENITY

94. The effects on rural character and amenity are associated with;

a. the change in nature of the building from one that reads as a 'shed' supporting rural production in the rural environment, to one that clearly supports residential activities and reads as a dwelling;

b. The change in activity around the building from rural oriented activity associated with a shed, to residential oriented activity associated with a dwelling, including associated outdoor living, noise, traffic, light and the general activities of people.

95. I agree that a shed could be established anywhere on this site but, in my opinion, that doesn't automatically make turning a shed into a house acceptable or appropriate. The NPDC also had an obligation to ensure that what was being built was a shed, not a dwelling.

96. In my opinion the difference between a shed and a dwelling is significant. A shed maintains the sense of open space and productive land use and reinforces the rural character of the landscape. A dwelling on the other hand increases the feeling of 'settlement' and habitation, and can erode rural character. Relying on the fact that built form exists in this location – as the applicant has done[18] - is overly simplistic in terms of visual effects, and does not appropriately account of amenity effects.

97. In this case obvious 'planning creep' has occurred. A shed is permitted in this location, and this has been leveraged to obtain building consent for a shed that clearly reads like a dwelling, and was clearly designed to accommodate habitable elements, but on paper at least, lacked the internal elements that make it 'habitable'. These elements have since been added, making it habitable and the applicant ow lives there.

98. A simple argument could be that merely adding these internal elements to make the shed habitable mean there is no effect. In my opinion this is not the case, and this appears to be supported by Mr Dobson in his report[19].

99. Given the same matters we are considering for this application were considered and assessed in the original application (**Appendix 1)** and Decision (**Appendix 2**) granting the subdivision that created the applicants property, it is necessary to review this decision.

100. A review of this decision identifies[20] that:

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[18] Section 4.2 of application
[19] Attachment C to the s42A report, paragraph 13.76,
[20] Paragraph 20, Original Decision

a. ‘Area Z’ is relied on in the determination of effects associated with the formation of the subject site would be avoided, remedied or mitigated, and were therefore able to be deemed less than minor;

b. The specification of the dwelling platform was cited as a reason for concluding that the cumulative effects on the environment associated with the subdivision would also be less than minor.

c. The original assessment correctly disregards the effects on parties who gave written approval based on the agreement to establish any future dwelling on ‘Area Z’.

d. The original decision then relies on the above effects assessment to pass the gateway test for a non-complying activity under the RMA 1991[21] .

101. Mr Dobsons report assesses landscape and visual effects using the original building platform (‘Area Z’) as a baseline for comparison. His assessment[22] ranges from ‘very-low’ to ‘low-moderate’, which, referring to the table of effects ratings provided by BlueMarble, indicates that when compared to ‘Area Z’ as a baseline, effects range from ‘slightly discernible’ to the lower end of ‘visible and recognisable, discernible, noticeable affect’.

102. Mr Dobson further states in his summary[23] that:

> *3.4 While the Proposal introduces a modest increase in landscape and visual effects, compared to a dwelling on the original building platform, these effects are generally well-contained and consistent with the evolving rural lifestyle character of the area. However, I note this evolving character is less aligned with the intent of the Subdivision, which was to minimise built form exposure, and it is even less aligned with the intent of the New Plymouth District Council’s Proposed District Plan to maintain rural character.*

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[21] Paragraph 47, Original Decision
[22] Attachment C to the s42A report, Paragraph 3.3
[23] Attachment C to the s42A report, Paragraph 3.4

103. In terms of rural character, landscape and visual effects, it is clear that moving the dwelling from ‘Area Z’ to ‘Area A’ will result in greater effects on rural character and amenity than a dwelling in ‘Area Z’.

104. Rural character, landscape and visual effects may however be able to be mitigated and a number of mitigations are put forward and proposed by Mr Dobson, the applicant and the processing planner. The fact remains though that we must weigh the status quo (‘Area Z’) against the proposal (‘Area A’) and determine which option better avoids, remedies or mitigates the effects.

105. In my opinion, even with significant mitigation on ‘Area A’, ‘Area Z’ still does a better job of avoiding and mitigating the effects identified during the subdivision than ‘Area A’ does.

106. In relation to the fact that a shed is permitted on ‘Area A’ (or indeed anywhere onsite) in my opinion it is clear that;

a. A shed on ‘Area A’ supports rural character and amenity more than a dwelling does.

b. The current shed on ‘Area A’ will maintain rural character and amenity at the levels expected in the PNPDP. Converting it to a dwelling will not.

107. 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.

108. As the commissioner has heard from the submitters, effects on rural amenity are not as simply mitigated as visual effects. This is because rural amenity is a collection of attributes – natural and man-made – that make a rural area distinctive, pleasant and attractive.

109. Activity associated with residential use is not anticipated or expected on ‘Area A’, nor was it provided for in the original decision that created this allotment. The expectation set by the consent notice is for residential activity to centre around ‘Area Z’. The change in the 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.

110. The fact that the submitters have relied on, and were entitled to rely on, the original consent notice restricting a future dwelling to 'Area Z' compounds the situation. People adapt to and plan for and around their environment, and the submitters have not been afforded the ability to consider how they may change what they do on their properties to reflect the potential of a dwelling on 'Area A'. In my opinion, to expect them to do so would be entirely inappropriate and unreasonable. This is the very point that the relevant case law makes, and in my opinion, this is why case law has established that amendment or removal of consent notices is not a matter to be taken lightly.

111. It is important to note that the potential effects detailed above were the concerns identified by the submitters when consulted with respect to the original application for the subdivision of the land, and they were satisfied that these rural character and amenity effects would be avoided and mitigated by restricting the location of the dwelling to 'Area Z'. As mentioned previously, it is on this basis that they gave written approval.

112. The submitters have not come up with a set of entirely different issues. Their original concerns remain as valid today as they did when the original subdivision consent was granted with 'Area Z' in place.

113. The original decision and associated conditions, (and the purpose of the consent notice which is being amended), cannot be disregarded as the s42A report appears to have done. Weight must be given to it, because, as detailed earlier, the consent notice is a 'continuation' of a condition relating to a subdivision consent, issued, as required, in accordance with 221(1). The subdivision created a title, which enabled a dwelling to be established in this environment which would not otherwise have been able to be established. The condition that resulted from this process has been relied upon by the community, and to meet the Objectives and Policies under the PNPDP, and ultimately, the sustainable management purposes under the Act.

114. The s42A report states[24] that 'Area A' meets the rules relating to the number of permitted dwellings, offsets and bulk and location requirements under the PNPDP, so therefore is consistent with policy direction. The

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[24] At paragraph 4.14 & 4.15

applicants planning evidence[25] makes a similar conclusion and states that a dwelling would be a permitted activity on 'Area A' under the PNPDP. This is insufficient in my opinion.

115. In the absence of the subdivision to which the consent notice is attached as a condition, there would be no ability to build on this area. The likelihood of a dwelling being established on the land as a permitted activity once the land was subdivided was a key consideration of the subdivision consent application, as it is the future use of the land which would generate effects, not the act of subdividing in its own right.

116. Permitted bulk and location standards were not considered sufficient to mitigate effects when considering the original application at that time, and for that reason the condition on the subdivision consent was imposed. It followed that the original application was considered consistent with policy direction because effects on neighbouring properties were determined to be acceptable. Any residual effects on neighbouring properties were also able to be disregarded under s95 of the RMA, because approval was given to the proposal. This approval and the decision relied on 'Area Z' being the site of any future dwelling.

117. Accordingly, I consider it is incorrect to rely on the assertion that the site of a dwelling on 'Area A' complies with permitted activity rules to confirm consistency with policy direction. I discuss this further in my policy assessment from paragraph 144.

SUMMARY – RURAL CHARACTER AND AMENITY

118. To summarise my opinion by referencing the questions I posed at paragraph 90:

a. Shifting the habitable dwelling platform from 'Area Z' to 'Area A' will have a greater effect on the rural character of the rural production zone in general, and the character of the area when viewed from adjoining private properties.

[25] Evidence of J Carvill, Paragraph 11.

b. Shifting the habitable dwelling platform from ‘Area Z’ to ‘Area A’ will have a greater on the rural amenity enjoyed by neighbouring parties on their properties.

119. I therefore do not consider that the application at hand is able to be framed as a ‘change in circumstances’ that will ‘better achieve the original purpose of the consent notice’ by resulting in lesser or similar effects on the environment than the status quo provided by the current consent notice.

120. Referencing back relevant case law, it is my strong opinion that consent notices are not designed to be amended or removed without careful consideration.

a. The purpose of the subject consent notice remains entirely relevant.

b. There has been no change of circumstances which render the consent notice of no further value.

c. The consent notice restricting habitable dwellings on the allotment to ‘Area Z’ remains as important today as it did when consent was granted, as it seeks to control the position of the dwelling on the allotment in order to avoid and mitigate effects on rural character and amenity.

121. The case law around consent notice removal and amendment sets a deliberately high bar, because of the high degree of certainty they give to both to ‘*the immediately affected parties at the time subdivision consent is granted, and to the public at large’*. In my opinion this bar has not been reached with this application, nor has the s42A report provided the necessary justification to make the amendments sought.

Precedent Effect

122. Precedent effects are relevant as “other matters” under s104(1)(c). In my opinion there is significant risk of precedent effects if the application is granted. I consider there are three key scenarios relating to precedent;

a. Use of a consent notice conditions to pass a non-complying subdivision through the s104(d) gateway test and/or the objectives policies in a plan, then variation of that consent notice as a discretionary activity at some later stage under s221.

b. The overarching ability for any consent notice that was deemed necessary at the time of not only this subdivision to mitigate effects, but the previous one, to be changed, making them less binding on current and future landowners than they are meant to be.

c. The obvious potential precedent for any shed to be converted to a dwelling, to circumvent rules/effects standards in the PNPDP which place stricter restrictions on dwellings than they do on sheds/other structures[26].

123. If this consent is granted, I see precedent effect as a very real risk, particularly given the settings around subdivision in the rural zone under the PNPDP. There is nothing unusual or exceptional about this application, and nothing that would differentiate it from any other consent notice in the district that requires landowners to establish dwellings in a certain location or any other shed which someone wished to convert to a dwelling.

124. This indeed appeared to be the very question held by the Environment Court in the decision that was appealed in *Ballantyne Barker Holdings Ltd V Queenstown Lakes District Council*[27] . The Environment Court questioned how much reliance they could place on a consent notice condition, upon which a decision was reliant, when it could be amended 'relatively easily' because such amendment was a discretionary activity under s221. This concern was firmly rebuffed by the High Court, based on what is a 'high bar' required to justify amendment or removal of consent notices and the robust enquiry that would be required in such circumstances.

Undermining of Integrity – Consent Notices and Planning Decisions

125. Given the purpose of the consent notice remains entirely relevant, its recency, and the lack of justifying circumstances to vary the consent notice, I have no doubt that granting the variation sought would result in the integrity of other consent notices being undermined, and a significant reduction in confidence in consent notices which are widely used in the district to address environmental effects.

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[26] E.g. RPROZ-S2 – setbacks and RPROZ-S5 – restricting the number of residential units,
[27] *Ballantyne Barker Holdings Ltd V Queenstown Lakes District Council [2019] NZHC 2844 [4 November 2019], at para 42.*

126. In the absence of the appropriate justification for the amendment, which is set out in the case law I have provided, in my opinion a decision to grant this consent will result in a complete loss of trust in consent notices by the NPDC, and the public, to the point where these would no longer be accepted as having any weight by Council and no party would be advised to give their written approval on the basis of them.

Cumulative effects

127. Cumulative effects are recognised in Part 1(3)(d) of the RMA as an effect on the environment, with the specific wording as follows;

> *d) any cumulative effect which arises over time or in combination with other effects— regardless of the scale, intensity, duration, or frequency of the effect…..*

128. Mr Dobson notes in his evidence[28] he observes that;

> *14.4 In terms of landscape effects, while no significant modification to landform has occurred, the presence of a more prominent dwelling and associated activity contributes to a gradual erosion of the traditional rural character. The landscape is now functionally transitioning toward a rural lifestyle environment, particularly when considered cumulatively with other nearby development.*

129. In my opinion, current policy settings require the applicant to avoid this cumulative effect, and therefore the consent should not be granted.

POLICY ASSESSMENT

Regional Policy Statement for Taranaki

130. The Regional Policy Statement for Taranaki (the RPS) sets the regional level direction for Taranaki, and was made operative in 2010.

131. *UDR OBJECTIVE 1.1 To recognise the role of resource use and contribution to enabling people and communities to provide for their social, economic and cultural wellbeing.*

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[28] Attachment C to s42A report, Paragraph 14.4

The consent notice that established 'Area Z' was put in place to avoid, remedy and mitigate effects associated with a dwelling on neighbouring parties. It has been relied upon by these parties in providing for their wellbeing. The original decision also noted that the dwelling location would be '*tucked against the embankment'* and '*prevents the wider open space on lot 2 being built upon'*[29]. Accordingly, I consider that the original decision and therefore a dwelling in 'Area Z' is more consistent with this policy than the subject proposal.

132. *AMY POLICY 1 1 The adverse effects of resource use and development on rural and urban amenity values will be avoided, remedied or mitigated and any positive effects on amenity values promoted. Any positive effects of appropriate use and development will be fully considered and balanced against adverse effects.*

Those qualities and characteristics that contribute to amenity values in the Taranaki region include:

a. safe and pleasant living environment free of nuisance arising from excessive noise, odours and contaminants, and from traffic and other risks to public health and safety;

b. scenic, aesthetic, recreational and educational opportunities provided by parks, reserves, farmland, and other open spaces, rivers, lakes, wetlands and their margins, coastal areas and areas of vegetation;

c. a visually pleasing and stimulating environment;

d. efficient, convenient and attractive urban forms; and

e. aesthetically pleasing building design, including appropriate landscaping and signs.

133. I agree with the processing planner[30] that in the rural zone there is a balance to be achieved between the amenity values experienced by people living in the rural zone, and the working environment. I agree that rural amenity includes those aspects of the working, productive nature of the rural zone. In my opinion, the status quo (Area Z) appropriately provides for this balance (and has been confirmed as doing so under the original assessment), whereas a dwelling in 'Area A' introduces a clear risk of upsetting it by reducing the amenity enjoyed by neighbouring properties.

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[29] Paragraph 20 in the original decision, see Appendix 2.
[30] Paragraph 4.67

134. It is my opinion that the application will adversely affect rural character and the amenity values of neighbouring properties who have relied on the consent notice restricting the dwelling to 'Area Z'.

135. My final comment in relation to this policy is the acknowledgement that the environment we are dealing with in this situation is one that is evolving towards more lifestyle form of 'Rural Environment'. This is mentioned by the experts for the applicant, and Council.

136. With this in mind, careful siting of dwellings on any new lots that are created is important when it comes to avoiding adverse effects on landscape and, in particular, amenity and in my opinion, this is even more relevant when an area is more densely populated. This is why the submitters engaged with the applicants for the original subdivision closely to ensure these effects were avoided. Establishment of 'Area Z', which was formalised in the original decision, was the result.

137. This is highlighted by the difficulty implementing mitigation around the dwelling on 'Area A'. What works for one neighbour may affect another neighbour – landscaping to screen the dwelling and curtilage from the Blairs property may shade the Hackling's property.

138. I disagree that the fact that the area is 'evolving towards rural lifestyle' is a reason to justify moving the building platform to a location that will have more effect than that originally consented.

139. The PNPDP has strengthened the efforts to retain the character of the rural zone and it is highly unlikely that further subdivision will be enabled. There will be limited change once the subject site is developed (in accordance with the covenants that continue to apply).

140. To justify moving the building platform and varying the consent notice, in my opinion, the applicant must demonstrate that the proposed varied platform would sit equally well, or better than the one currently secured by way of consent notice against the policy framework. In my opinion, it does not.

141. Alternatively, the written approval of all those persons who are affected would be required.

National Policy Statement for Highly Productive Land (NPS-HPL) 2022

142. I agree with the processing planner[31] that under the NPS-HPL, Council is able to consider allowing the site to be developed and used for the purpose proposed.

PNPDP STRATEGIC LEVEL OBJECTIVES

143. For completeness I note that neither 'Area A' or 'Area Z' are more favourable in terms of the Strategic Level Objectives in the PNPDP for the Rural Zone. These are:

> *RE-11 Primary production and rural industry activities are able to operate efficiently and effectively and the contribution they make to the economic and social well-being and prosperity of the district is recognised, while ensuring their adverse effects are avoided, remedied or mitigated.*
>
> *RE-12 Highly productive land and natural, physical and cultural resources located within rural areas that are of significance to the district are protected from inappropriate activities.*

RURAL ZONE - Objectives and Policies

144. In my opinion, the proposal is not consistent with the Objectives and Policies for the Rural Production Zone in the PNPDP. It 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.

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[31] Paragraph 4.72

145. Objective **RPROZ-O4** is to *Maintain the predominant character and amenity of the Rural Production Zone, which includes:*

1. *extensive areas of vegetation of varying types (for example, pasture for grazing, crops, forestry and indigenous vegetation and habitat) and the presence of natural features, historic heritage, Māori purpose activities, and large numbers of farmed animals;*

2. *low density built form with open space between buildings that are predominantly used for agricultural, pastoral and horticultural activities (for example, barns and sheds), low density rural living (for example, farm houses and worker's cottages) and community activities (for example, rural halls, domains and schools);*

3. *a range of noises, smells, light overspill and traffic, often on a cyclic and seasonable basis, generated from the production, manufacture, processing and transportation of raw materials derived from primary production;*

4. *interspersed existing energy activities and rural industry facilities associated with the use of the land for intensive indoor primary production, quarrying, and cleanfills; and*

5. *the presence of rural infrastructure, including rural roads, and the on-site disposal of waste, and a general lack of urban infrastructure, including street lighting, solid fences and footpaths*

146. In my opinion, a dwelling on ‘Area Z’, which is already part of the 'character' of the rural zone, is more consistent with this Objective than ‘Area A’. The original decision also noted that the ‘Area Z’ dwelling location would be 'tucked against the embankment' and 'prevents the wider open space on lot 2 being built upon'. While it hasn't completely avoided the open space being built upon, a shed in ‘Area A’ instead of a house is more consistent with this policy than a dwelling.

147. As the consent notice was a continuing condition of consent associated with a subdivision application, and the original application relied on a dwelling being on ‘Area Z’, it remains necessary in my opinion to review proposed

activity against the Objectives and Policies relating to Rural Subdivision in the PNPDP. I conclude that:

a. Overarching Objective SUB-O1 – is that '*Subdivision results in the efficient use of land and achieves patterns of development that are compatible with the role, function and predominant or planned character of each zone'*.

   'Area Z' was put in place to ensure that the dwelling on the allotment created would be compatible with the area, which was one that, as experts have pointed out, is evolving towards 'rural lifestyle'. 'Area A' compromises this and is not as compatible as 'Area Z'.

b. SUB-P10 is to *avoid subdivision that would compromise the role, function and predominant character of the Rural Production Zone, or is more typical of patterns of development in urban areas.*

   The application is not consistent with this policy, as it will compromise rural character by allowing a *modest increase in landscape and visual effects, compared to a dwelling on the original building platform,* as identified by Mr Dobson[32]. While he observes that *these effects are generally well-contained and consistent with the evolving rural lifestyle character of the area,* he notes; *this evolving character is less aligned with the intent of the Subdivision, which was to minimise built form exposure, and it is even less aligned with the intent of the New Plymouth District Council's Proposed District Plan to maintain rural character.*

c. SUB-P14 Requires *subdivision design and layout in the Rural Zones to respond positively to, and be integrated with the surrounding rural or rural lifestyle context, including by:*

   1. incorporating physical site characteristics, constraints and opportunities into subdivision design;

   2. minimising earthworks and land disturbance by designing building platforms that integrate into the natural landform;

[32] Attachment C to the s42A report, Paragraph 3.4

3. *avoiding inappropriately located buildings and associated access points including prominent locations as viewed from public places;*

4. *incorporating sufficient separation from zone boundaries, transport networks, rural activities and rural industry to minimise potential for reverse sensitivity conflicts…..*

I do not consider that the amended layout proposed by the application positively responds to the surrounding rural context. Due to the consultation that occurred to create it, 'Area Z' more appropriately responds to the surrounding context and area. 'Area Z' is also of less risk, as it requires less mitigation than 'Area A' and will create less of an enforcement burden on the NPDC.

For 'Area A' to respond positively to and be integrated with the surrounding rural context, it would need to be demonstrated that 'Area A' does this better than 'Area Z'. Clearly it does not. Experts agree that there will be rural character and landscape effects associated with 'Area A' that are not associated with 'Area Z'. Further, if 'Area A' did integrate better, and respond positively to the surrounding context, then this would have been identified by the submitters. When approached for approval, they would have given it. Instead, they were immediately concerned about the effects of the dwelling on 'Area A'.

In terms of reverse sensitivity, and earthworks, I consider that the proposal is neutral compared to 'Area Z'.

148. SUB-P15 is to *Ensure that subdivision in the Rural Lifestyle or Rural Production Zones maintains or enhances the attributes that contribute to rural character and amenity values, including:*

a. *varying forms, scales, spaciousness and separation of buildings and structures associated with the use of the land;*

b. *maintaining prominent ridgelines, natural features and landforms, and predominant vegetation of varying types;*

c. *low population density and scale of development relative to urban areas;*

d. on-site servicing and a lack of urban infrastructure; and

e. in the Rural Production Zone, the continued and efficient operation of rural activities and productive working landscapes

In relation to SUB-P15, the proposed activity will not maintain or enhance the attributes that contribute to rural character and amenity values, because 'Area A' will have greater effects on the rural landscape and, in particular rural amenity than 'Area Z'.

149. The original application for consent was considered under the ONPDP, and the notified version of the PNPDP – so the PNPDP policies were in effect. For completeness, while the PNPDP is now beyond challenge, as noted by the planner for the applicant[33], I note that there has not been any substantial change in the policy wording between to two versions. Comparison between the Notified Version (Sept 2019) current when original subdivision was granted, and the appeals version (May 2025) relevant to current application is included as **Appendix 6.**

150. It is my experience that in the approximate 3 years since the original subdivision consent was granted, the policy direction and settings relating to land use and subdivision in the rural zone have moved towards being more stringent, which is to be expected as the PNPDP has increasing weight and operability. In my experience, if the same subdivision was presented to the NPDC today as that which was granted in May 2022, it would be unlikely to be granted.

151. In my experience, it is now more common than not to identify and secure building platforms by way of condition/consent notice at the time of subdivision. This is because:

a. At application, there is no other way to either accurately demonstrate that the effects on rural character and amenity that may arise from the subdivision are acceptable.

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[33] Evidence of J Carvill, paragraph 22.

b. Then, if the consent is granted, the consent notice gives certainty that the activity will proceed as anticipated when the original application was assessed.

152. This reinforces that granting of this application to change the consented building platform location would undermine this crucial consent notice mechanism, which was relied upon by the community at subdivision.

Consideration of an alternative outcome

153. The submitters seek that this application be declined in its entirety, and my evidence supports this.

154. However it would be remiss of the submitters any myself not to consider the possibility of an alternative outcome, whereby the consent is granted, with conditions.

155. If the consent is to be granted, the proposed conditions as put forward in the s42A report, or as proposed to be amended by the applicants evidence, are not adequate to constrain the environmental effects to within those that are anticipated in the 42A report.

156. I am of the strong opinion that, based on the case law and evidence I have provided, this consent cannot be granted, however I provide a mark-up to the proposed conditions which the submitters would be agreeable to, should the commissioner disagree and determine to grant the application.

157. I note that some of these conditions are *"Augier"* conditions which the applicant would need to volunteer so that they may be imposed, however in the face of losing the certainty and their ability to rely on 'Area Z', it is submitted that these are reasonable and appropriate. If of a mind, the commissioner may seek confirmation or otherwise, that the applicant is agreeable to these, or they may comment on tis at the hearing.

158. In relation to the original conditions, my overarching concern is that the majority of the effects assessment is based on the dwelling which is located on the building platform remaining 'as is'[34]. The conditions however, which

[34] E.g. See paragraph 36 or Mr Bains evidence.

will be imposed via consent notice, do not require the building to be built in accordance with a defined set of plans. The conditions attached therefore seek to constrain the dwelling to what has been assessed, and to ensure that the mitigation itself does not result in unintended adverse effects.

159. My observation in working up this set of conditions is that the mitigation required to satisfy the concerns of the submitters and to ensure that the effects on the environment are as anticipated:

a. Does not achieve the same outcome in terms of rural character and amenity as anticipated by 'Area Z';

b. Results in five parties carrying the 'effects' burden associated with the applicants unwillingness to comply with the original consent notice;

c. Will result in a consent notice that contains many conditions and requirements, which will substantially increase the regulatory burden on the NPDC.

160. Given the applicants disregard of the existing consent notice, it is entirely reasonable to question whether the applicant has the ability or intent to comply with any new one, and whether the NPDC would even enforce a new consent notice.

161. Further, the existing consent notice is very simple. If granted, this one would be complicated. I have been in many hearings where the 'track record' of the applicant and their 'ability to comply' has been questioned as an 'Other Matter' under s104(1)(c).

162. If the commissioner is of a mind to consider track record, then the track record of the applicant in this case is very clear. They have had deliberate and blatant disregard for the existing consent notice, proceeding to establish and occupy a dwelling in 'Area A' despite this being unlawful and despite knowing it was unlawful. Their ability to comply with a future consent notice cannot be relied upon.

163. If the application is granted, returning to precedent briefly, the submitters are extremely concerned that in due course, the dwelling on 'Area A' would be changed again. It would be made bigger, taller, another shed would emerge beside it and be converted to another 'wing' or habitable room.

164. They would again be faced by an application to vary the consent notice, which they would have to oppose, in order to maintain the integrity of the area. The submitters would have no certainty as to where this might end.

Conclusion

165. I have set out the case law and planning reasons why I consider it is not appropriate to grant this variation to an existing consent notice. These are:

a. The parties who instigated, benefited from and relied upon the original consent notice oppose the proposed change;

b. The consent notice is less than 3 years old, and the purposes for which it was established remain entirely relevant;

c. There has been no material change circumstances which justify the amendment;

d. The amended location of the building platform will have noticeable effects on the rural character and amenity experienced by the submitters, which is unacceptable given it was reasonable for them to, and they are entitled to, rely on the consent notice imposed at subdivision; and,

e. Granting the amendment will generate a precedent effect, and cumulative effects, and will significantly undermine the ability of the community and Council to rely on consent notices to mitigate effects in the future.

166. Case law has confirmed that consent notices are designed to be relied on by the community and are not meant to be easily amended or cancelled.

167. Neither the applicants evidence, nor the s42A report provides the appropriate and necessary justification or assessment that would allow the variation to be granted, and my completion of such an assessment confirms that it would not be appropriate to grant the application.

168. Even if we do make it through the case law and wide reaching precedent to the point where it may be possible to grant the application, the raft of conditions that will need to be imposed to ensure the effects in ‘Area A’ are mitigated, combined with the track record of the applicant, throw in more doubt about how appropriate granting the variation would be.

169. The application must be declined, and the applicants must be required to build their dwelling on ‘Area Z’.

170. No bearing or weight must be given to the fact that the dwelling is existing. It is illegal, and its establishment was not accidental. The applicant knew exactly what the risk was when they embarked on this course of action.

171. Further, to avoid further undermining of consent notices in the district, once declined, the NPDC must take decisive action to enforce the existing consent notice.

Kathryn Hooper

MNZPI

7 July 2025

Appendices

1.Original Application – Subdivision Consent

2. Planners report and decision – Original Consent

3. Decision – Roach and South Taranaki Trustees (Woolcombe Terrace)

4. Proposed Amended Conditions

5. Case Law:

A. Ballantyne Barker Holdings Ltd V Queenstown Lakes District Council [2019] NZHC 2844 [4 November 2019],
B. *Frost v Queenstown Lakes District Council* [2021] NZHC 1474.

6. Rural Production Zone – Comparison of Notified Version (Sept 2019) current when original subdivision was granted, and the appeals version (May 2025) relevant to current application.

Appendix 1.Original Application – Subdivision Consent

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Wed 23/02/2022 4:41 PM

Stefan Kiss <stefan@taylorpatrick.co.nz>

[#TP21089] Application for Subdivision Resource Consent - 249 Weld Road Lower

To applications

Shirley Holland | Planning

Good afternoon Applications

Please find at link below a new application for 2 lot rural subdivision and a boundary adjustment at 249 Weld Road Lower, Tataraimaka.

The documents at link are

1) Taylor Patrick consent report
2) Signed application Form
3) Appendices 1 to 6 – Scheme Plan, LVIA, Title, Signed approvals, exist consent notice, exist land covenant

Click here

Look forward to receiving confirmation of Consent receipt. Please address lodgement fees to the applicant and forward to me.

Regards

Stefan Kiss | Registered Professional Surveyor

Huatoki Business Centre, 17a Brougham Street, New Plymouth
PO Box 8258, New Plymouth 4340, NZ | P: 06 758 1021 | m: 021 543 693
stefan@taylorpatrick.co.nz | www.taylorpatrick.co.nz

TAYLOR® PATRICK
SURVEYING PLANNING DESIGN

Document Transmittal:

21089 - Resource Consent lodgement pack

Please find attached the following files, which were issued by Stefan Kiss on 23/02/2022 4:38:50 pm.

Files

File Name	Version	Change Description
21089 RC report.pdf	1	New file
21089-100-02.pdf	5	
Appendix 2 - LVIA & Graphic Supplement 8 Dec 2021.pdf	3	File checked in for backup purposes only
Appendix 3 RT 685707.pdf	1	New file
Appendix 4 SIGNED-All Written Approvals.pdf	3	File checked in for backup purposes only
Appendix 5 - Consent Notice 10058782-2.tif	1	New file
Appendix 6 - Land Covenant 7784375-1.tif	2	File checked in for backup purposes only
signed application Form.pdf	2	File checked in for backup purposes only

Issued To

Contact Name	Contact Email
Applications NPDC	applications@npdc.govt.nz

Te Kaunihera-ā-Rohe o Ngāmotu
NEW PLYMOUTH DISTRICT COUNCIL
newplymouthnz.com

FORM 9
Application for a subdivision resource consent

Section 88, Resource Management Act 1991

This form must be submitted with a completed application cover page form.

1. Applicant details

1a. I am the ○ Property owner ○ Lessee ☑ Agent authorised by owner/lessee

1b. Full name: Stefan Kiss (First name(s)) Taylor Patrick (Surname)

1c. Electronic service address: stefan@taylorpatrick.co.nz

1d. Telephone: 021543693 (Mobile) (Landline)

1e. Postal address or alternative method of service under section 352 of RMA 1991: PO Box 8258 New Plymouth

2. Property owner details

Provide details below for the property owner if different to 1. above

2a. Full name: Tracey (First name(s)) Beaton (Surname)

2b. Electronic service address: graeme.beaton@stratumgroup.co

2c. Telephone: 0064272136282 (Mobile) (Landline)

3. Description of proposed activity

3a. Description of activity: 2 Lot Rural Subdivsion and a boundary adjustment

3b. Description of the site at which activity is to occur: 249 Weld Road Lower (Lot 2 DP 484251)

3c. Description of any other activities that are part of the proposal: None

3d. Details of additional resource consents required for this activity

☑ No additional resource consents are required.

○ Additional resource consents are required.

Please provide details of the required resource consents, and whether these have been lodged.

3e. District Plan rule(s) not being met: Rur 78

3f. Proposed start date: 1 May 2022

Please turn over

OFFICE USE ONLY

Date received		Application #	
Time received		Document #	
Received by		Property ID	
Receipt #		Land ID	
Amount paid	$		

Planner's Pre-check

Signature

Date

Liardet Street, Private Bag 2025, New Plymouth 4342, New Zealand. Telephone 06-759 6060, Fax 06-759 6072, Email enquiries@npdc.govt.nz, Website www.newplymouthnz.com

3. Description of proposed activity - continued

3g. Description of subdivision: Lots 1 to 3 being a proposed subdivision of Lot 2 DP 484251

3h. Type of subdivision

- [x] Fee simple
- [ ] Cross lease
- [ ] Boundary adjustment
- [ ] Right of way or other easement
- [ ] Unit title
- [ ] Cancellation of amalgamation covenant

3i. Number of new lots: 3 (Lot 3 will be amalgamated with adjoining Lot 1 DP 315057)

4. Information included in application

I confirm that I have assessed my proposed activity against the relevant matters of the RMA, and have attached the assessment and all other required information as listed:

- [x] Part 2 Purpose and Principles of the Act
- [x] Section 104 Consideration of Applications
- [x] Schedule 4, including an Assessment of Environmental Effects (AEE).
- [x] Scheme plan. Your scheme plan must show the following items:
  - Position of all new boundaries.
  - Areas of all new allotments (unless a cross-lease, company-lease, or unit plan).
  - Locations and areas of new reserves to be created, including esplanade reserves/strips.
  - Locations and areas of any existing esplanade reserves/strips and access strips.
  - Locations and areas of any parts of the bed of a river or lake to be vested in a territorial authority under section 237A.
  - Locations and areas of any land within the coastal marine area (which is to become part of the common marine and coastal area under section 237A).
  - Locations and areas ofland to be set aside as new roads.
- [ ] Floor plan.
- [ ] Elevation plan. Your plan must show the groundlines and the view of your site, from the ground up, from all boundaries.
- [x] Written approvals from affected parties. Contact the Council if you are unsure of who the potentially affected parties might be.
- [ ] Application fee. Refer to the subdivision fees and charges schedule.

7. Privacy statement

The Privacy Act 1993 applies to the personal information provided in this application. For the purposes of processing this application the Council may disclose that personal information to another party. If you want to have access to, or request correction of, that personal information, please contact the Council.

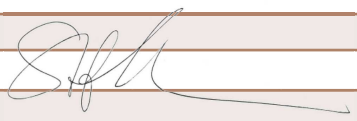
8. Applicant's declaration and privacy waiver

By signing this application, or by submitting this application electronically, I confirm that I am authorised to make such an application, that the information contained in this application is true and correct and that I have read, understood and agree to such terms and conditions applying to this application. I acknowledge and agree to the disclosure of my personal information in respect of this application.

A signature is not required if this application is submitted electronically.

If you are signing on behalf of a trust or company, please provide additional written evidence that you have signing authority.

First name(s)	Surname
Stefan	Kiss

Signature	Date
	23 Feb 2022

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NEW PLYMOUTH DISTRICT COUNCIL
newplymouthnz.com

FORM
Application cover page
(required with all other forms)

1. Property details

1a. Site address (Specify unit/level number, location of building within site/block number, building name and street name): 249 Weld Road Lower

1b. Current lawfully established use: Residential dwelling and lifestyle block

1c. Legal description: Lot 2 DP 484251

1d. Rapid number:

2. Property owner details

2a. Owner name: Tracey (First name(s)) Beaton (Surname)

2b. Name of additional owner(s)/company/trust: na

2c. Contact person (if different from above): Graeme Beaton

2d. Postal address (include postcode): 249 Weld Road Lower

2e. Contact details: Phone: Mobile: 0064272136282 Fax:

2f. Email: graeme.beaton@stratumgroup.co

3. Payer details

3a. Required for invoice: ☑ Applicant - proceed to 4 ○ Owner - proceed to 4 ○ Other - provide details below

3b. Name in full: Tracey Beaton

3c. Postal address: 249 Weld Road Lower, Tataraimaka

4. Description of project

4a. Detailed description of the development/ project: Lots 1 to 3 being a subdivision of Lot 2 DP 484251 , as fully described in attached consent report and scheme plan from Taylor Patrick Limited

4b. Will business activities take place when building is completed? ○ Yes ☑ No

Please turn over

Liardet Street, Private Bag 2025, New Plymouth 4342, New Zealand. Telephone 06-759 6060, Fax 06-759 6072, Email enquiries@npdc.govt.nz, Website www.newplymouthnz.com

5. Council applications for this project

OFFICE USE ONLY

	Application attached	Have applied already (write the application number if known)	Information provided
5a. Common applications			
Project information memorandum	○		●
Building consent	○		●
Vehicle crossing	○		●
Encroachment licence	○		●
Land use resource consent	○		●
Deemed permitted boundary activity notice	○		●
Subdivision resource consent	○		●
Sewer connection/disconnection	○		●
Stormwater connection/disconnection	○		●
Water connection/disconnection	○		●
5b. Non-residential applications			
Discharge of trade waste consent	○		●
Alcohol licensing	○		●
Food premises registration	○		●
Health Act registration (Hairdressing, camping ground, funeral parlour, offensive trade)	○		●
Beauty registration	○		●
5c. Other project authorisations			
Swimming pool registration	○		●
Temporary obstruction on road reserve	○		●
Temporary road closure	○		●
Easements through Council-owned reserve land	○		●
5d. Other project requirements			
Rapid number request	○		●
Contractors parking space reservation	○		●
Existing street damage declaration	○		●

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GUIDE
Application cover page

Explanations in this guide are intended to assist you to complete the application cover page form - numbers on the form relate to the explanatory notes in this guide.

How to use the application cover page form

The Council administers a number of Acts on behalf of central Government. Each Act sets out specific requirements on what type of activities or projects need to be approved under that legislation.

This application form is designed to offer you an integrated way to apply for multiple approvals or Council services and achieve compliance for your project.

You only need to submit one application cover page form if you are applying for multiple approvals at one time.

Complete the application cover page form
↓
Complete and attach the form(s) that correspond to the approval(s) that you require for your project
↓
Attach payment to your application(s)
↓
Submit your application(s) to the Council

Guidance notes to assist completion of your application cover page form

1. Property details

1a. Site address

☑ Write the physical address where the project will take place.

If the building has a name, please include it in the site address. PO Box addresses are not acceptable.

Example:

✓ Unit 4, 3rd Floor, XYZ Building, 123 Devon Street West, New Plymouth.

✗ PO Box 456, New Plymouth.

✗ 3rd Floor, XYZ Building, 123 Devon Street.

For properties that are undergoing subdivision, use the address indicated on the Land Transfer Plan with section 223 certificate endorsed.

DISCLAIMER: BUILDING CONSENT APPLICATIONS ACCEPTED FOR LAND UNDERGOING SUBDIVISION

The owner/applicant accepts that the issue of a building consent as requested in an application does not provide any assurance or representation by New Plymouth District Council that legal title to the land is now or will ever become available and the owner/applicant should take legal advice before commencing construction work.

1b. Current, lawfully established use

☑ Write the lawfully established use of the building.

If you do not know this, please describe to the best of your knowledge. For example: single residential dwelling; shop; takeaway bar; warehouse.

1c. Legal description

Every property has a unique legal description assigned to it. This information is given on your rates instalments invoice or certificate or title.

☑ Write the legal description of the property.

Example:

✓ Lot 1 DP 2345

✓ S PT SEC 678 DP 901

1d. Rapid Number

☑ If the project is in a rural area and you have purchased a rapid number, write this number in the space provided.

2. Property owner details

☑ Write the name and contact details for all owners. Include any company or trust name.

☑ If the property is owned by a company, partnership or trust, write the name of the person representing the organisation.

WATER BILLING

If you are applying for a water connection and it needs to be metered, water billing will be sent to this address.

Binding interpretation of the Acts, regulations and bylaws can be issued only by the courts. Indications and guidelines issued by the Council are provided with the intention of helping people to understand the legislation. They are however offered on a 'no liability' basis and in any particular case those concerned should consult their own legal adviser.

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3. Payer details

Indicate who will receive the invoice.

4. Description of project

4a. Detailed description of the development/project

Describe the nature and scope of all parts of the project.

For example:

- New one-storey single residential dwelling.
- Three stand-alone two-storey dwellings, each with their own vehicle access and attached carport.
- Replace bath with shower.
- Install woodfire to replace existing open fireplace.
- Repile existing building and improve drainage.
- Excavating soil for a farm track within 50m of a sand dune.
- Boundary adjustment to increase the size of Lot 2 DP 3456 and decrease the size of Lot 3 DP 3456.
- New café, with the intention to use a portion of the footpath and the space above it for additional seating capacity.

4b. Will business activities take place when building is completed?

Tick yes if the building is to be used for business activities after it is completed, e.g. operating business from home, take-away shop, production of chemical products, factory, orchard and shop, etc.

Tick no if the building is to be used purely for residential purposes.

5. Council applications for this project

Tick to indicate all applications that the application cover page form relates to.

Using this form for multiple applications saves you writing the same information more than once.

Where an application has already been lodged for this project, write the application, licence or consent number.

This will help the Council to assist you in managing your whole project.

Examples of projects requiring multiple Council applications

If you are building a new house with a swimming pool in an urban area, and the site is such that you need to build over Council pipes, you may need to complete all of the following applications:

- Application cover page form
- PIM &/or building consent form
- Vehicle crossing form
- Water connection form
- Sewer connection form
- Stormwater connection form
- Swimming pool registration form
- Existing street damage declaration
- Temporary road closure
- Application for easements through Council-owned reserve land

If you are building a garage on the boundary and installing a vehicle crossing, complete:

- Application cover page form
- PIM &/or building consent form
- Vehicle crossing form
- Land use resource consent form

If you are operating a restaurant/café/bar, with tables on the footpath, complete:

- Application cover page form
- Food premises registration form
- Alcohol licensing form
- Encroachment licence form

If you are converting your residential garage into a hairdressing salon, complete:

- Application cover page form
- PIM &/or building consent form
- Health Act registration form
- Land use resource consent form

Not sure what approvals you need?

Refer to the appropriate checklist for your application.

If you still have questions, visit the Civic Centre in Liardet Street, New Plymouth and discuss your project with a Council officer, or phone the Council on 06-759 6060.

Tracey Beaton

249 WELD ROAD LOWER
Tataraimaka

PROPOSED 2 LOT RURAL SUBDIVISION AND BOUNDARY ADJUSTMENT

20081

21095

CONTENTS

APPENDICES

1.0 APPLICATION DETAILS

Applicant: **Tracey Beaton**

Location: **249 Weld Road Lower, Tataraimaka**

Description: **Lot 2 DP 484251**

CT Reference: **685707**

Site Area:	**Total Area 5.62571 ha**
Consent Sought:	**Subdivision**
Zone:	**ODP - Rural Environment Zone (map E2) PDP – Rural Production Zone**
Zone Overlays:	**Controlled Area – Keeping of Goats**
Activity Status:	**Discretionary**
Address for service:	**c\o Taylor Patrick Limited, PO Box 8258 New Plymouth**

2.0 THE SUBJECT SITE AND ITS IMMEDIATE SURROUNDS

The subject site is a 5.625 ha rural block located south of Oakura. The site fronts Weld Road on its eastern side and is bounded by other lifestyle blocks to the north, west and south.

The site contains an existing dwelling, garaging and associated sheds in the southern extent of the site. Access is a private driveway direct to Weld Road, this is not a shared driveway or right of way.

The site is mainly in pasture, with some landscape planting in the curtilage area of the existing dwelling.

The site contains two main terraces, the elevated upper terrace contains the existing dwelling and curtilage area, there is then an embankment which drops down to a wide expansive and undulating terrace which is in grazing paddocks. At the western boundary the land drops again down an embankment to a driveway that serves another landowner in the northwest.

There are no streams or water bodies on or abutting the site.

The nearest waterbody is the Timaru Stream. This is located further west from the subject site and is typified by a lower terrace which contains a row of lifestyle blocks adjacent the stream margins. The Timaru in this location is supported by existing Esplanade Strips.

We understand that the site is contained within the Rohe of Taranaki Iwi. There are no identified Waahi Taonga/Sites of Significance to Māori or Archaeological Sites within the application site.

3.0 THE PROPOSAL

The proposal is to subdivide the existing parcel into two allotments and to also undertake a boundary adjustment with adjoining landowner, as shown on attached Taylor Patrick Scheme Plan 100 Rev 03 dated 13/10/2021.

Proposed Lot 1 is 1.3458 Ha more or less and will contain the existing house and surrounds. The Area E shown on the scheme plan is the same Area E on DP 484251 that is named in the existing consent notice. There is also proposed to be a private covenant over area AA to protect views from Lot 1 DP 484251 (this is a private matter and does not require to be a condition of consent but is included on the scheme plan for public record).

Proposed Lot 2 is 4.1578 Ha more or less and contains the undulating lower terrace and an area to form a driveway up onto Weld Road. There is also proposed to be a private covenant over area Y to protect views from Lot 1 DP 484251 and Area X to protect views from Lot 1 DP 315057 (these are a private matter and do not require to be conditions of consent but are included on the scheme plan for public record).

Proposed Lot 3 is 0.1219 ha more or less and is proposed to be a boundary adjustment with Lot 1 DP 315057 by way of Amalgamation condition. This will enable Lot 1 DP 315057 to own the 5m strip of land along its northern boundary and a triangular shaped piece along its western boundary. We request this amalgamation condition as a condition of the subdivision resource consent, using the wording proposed on the attached scheme plan.

A range of mitigation measures are proposed, and these are listed in the attached LVIA from Blue Marble Landscape Architecture. This LVIA provides a very comprehensive assessment of the proposal, and it is recommended that this report be read in conjunction with the Subdivision Application. There are several sections of the LVIA which are not repeated in this report to avoid duplication.

We have reviewed the recommendations of the attached Blue Marble Landscape and Visual Impact Assessment Report and propose the following mitigation measures as conditions of consent and confirmed by Consent Notices on the Title (noting that some of the below are in addition to the mitigation measures proposed by Blue Marble).

Lot 1- all while the land remains in the Rural Environment Zone

- No habitable buildings shall be erected outside of the Area marked E on Lot 1.
- A maximum of one habitable dwelling shall be permitted on Lot 1.

Lot 2 – all while the land remains in the Rural Environment Zone

- No habitable buildings shall be erected outside of the Area marked Z on Lot 2.
- A maximum of one habitable dwelling shall be permitted on Lot 2.
- No habitable buildings shall exceed 5.5m in height above existing ground level.
- Roofs of all new buildings (habitable and non-habitable) shall be a recessive shade (less than 20% Light Reflectance Value (LRV)).
- Cladding materials (including walls and gable ends, excluding glazing and joinery) of all new buildings (habitable and non-habitable) shall be a recessive shade (less than 40% Light Reflectance Value (LRV)).
- Water tanks and guttering shall be a recessive shade, with a light reflectance value (LRV) of less than 25% LRV.
- Any fencing of new boundaries shall consist of post and rail, or wire post and batten fencing
- No closed board fencing taller than 1.2m high should be located further than 10m from any building (taller fencing within 10m of dwellings is permitted to enable privacy of courtyards etc).
- No external point sources of light shall be visible from outside the Lots. All external fittings shall be hooded and cast down.
- Any cut or fill batters greater than 1.5m in height should be laid back at an angle suitable for planting or grassing, this angle should be no steeper than 1:1

Lot 3 - all while the land remains in the Rural Environment Zone

- No habitable buildings shall be erected within Lot 3 hereon

4.0 LEGAL AND PRACTICABLE ACCESS

There is an existing formed vehicle crossing at the driveways to Lot 1.

A new Type G Rural crossing is proposed for access into Lot 2 in the location shown on the scheme plan.

No other access points are required.

5.0 EXISTING EASEMENTS, CONSENT NOTICES OR LAND COVENANTS

There are existing Land Covenants and Consent Notices on the subject Site.

Consent Notice 10058782.2 (attached in Appendix 5) includes bulk and location controls related to fences, location of buildings, recessive colouring and future planting. It is proposed that these measures will be included in a new Consent Notice for this new subdivision and that therefore this application includes the cancellation of CN 10058782.2. We request a condition cancelling this consent notice CN 10058782.2

Existing Easement 360024.3 is a right to convey electricity and 9675676.2 is a right to convey water – both of these easements are to remain and are unaffected by the proposal.

Land Covenant 7784375.1 (attached in Appendix 6) is a private covenant to control build quality by not permitted relocatable dwellings on to the site. This covenant is to remain and is unaffected by the proposal.

6.0 ENGINEERING INVESTIGATION (BUILDING PLATFORMS)

No engineering investigation for the proposed building platform on Lot 2 has been undertaken to date. A condition of consent requiring an engineering report is anticipated.

7.0 EXISTING SERVICES

No existing town-supply water or sewer services are connected to the site. Potable water by water tank is anticipated for Lot 2. Disposal of wastewater to ground is anticipated for Lot 2.

8.0 TARANAKI IWI STATUTORY ACKNOWLEDGEMENT AREA

The site is within the rohe of Taranaki Iwi but does not contain any waterbody contributing to the Timaru catchment, therefore the site is not technically within the Statutory Acknowledgement Area for Taranaki Iwi. We have however carried out an assessment of Taiao Taiora as follows:

8.1.1 Taiao Taiora – ASSESSMENT OF TARANAKI IWI ENVIRONMENTAL MANAGEMENT PLAN

Taranaki Iwi have developed an Environmental Management Plan – Taiao Taiora, to assist with assessment of Consent Applications within their Rohe. We assess below the application against the relevant objectives and policies of Taiao Taiora.

8.1.2 Papatunanuku

We note that the site does not contain any wetlands or original native forest cover but does have recently planted and tended native plantings (planted within the last 50 years). Therefore the following are relevant:

Objectives:

11.2.2.1 The mouri of Papatuanuku in the Taranaki Rohe will be protected, cared for and restored.

11.2.2.1 Papatuanuku will be lush, healthy and sustaining for all. Her native forest cover will be thriving and free of pests.

11.2.2.5 The whenua will be cared for by Taranaki Iwi and others for mutual, reciprocal benefit to the whole community.

11.2.2.8: The natural character of the coastal margins will be protected from inappropriate use and development.

Policies:

11.2.3.5 Decision makers should consider the effects of an activity on the mouri of Papatuanuku when making decisions on applications.

11.2.3.6 New housing developments will promote sustainable living, and where possible, be para kore, self and community sufficient, use low impact and passive design, generate own power, have low to nil environmental impacts.

11.2.3.12 Any landscaping assessment undertaken will consider the underlying cultural values as an important and inseparable element of that landscape

8.1.3 Tangaroa-ki-Uta - Freshwater

We note that the site is in the near distance from the Timaru River.

Objectives:

11.5.2.1 The mouri of Wai Māori in the Taranaki Iwi Rohe will be protected, cared for and restored.

11.5.2.2 All freshwater in the Rohe is fishable and swimmable by 2040. All significant waterbodies are drinkable by 2060.

11.5.2.2 The relationship of Taranaki Iwi, Hapu, marae/pa and whanau with wai is respected, enhanced and supported.

11.5.2.6 Stormwater is captured and treated and where possible utilised as a resource. When released to streams it is released in a manner aligned with natural flow regimes so to avoid damage to ecosystems and increased erosion.

11.5.2.7 Waterways and wetlands are identified, and management responses, including exclusion of stock and planting of riparian margins, appropriate to the topography, vulnerability and environmental value of those water ways and wetlands, are put in place.

Policies:

11.5.3.3 Decision makers should consider the effects of an activity on the mouri of Tangaroa-ki-Uta when making decisions on applications.

8.1.4 Tane and RONGO and TARANAKI MOUNGA

We note the site contains no habitats of indigenous vegetation (forest lands), nor any known areas of cultivation of plants, herbs and medicines, nor is it located on or near Taranaki Mounga.

8.1.5 ASSESSMENT OF PROPOSAL AGAINST THE RELEVANT OBJECTIVES AND POLICIES OF TAIOA TAIROA

The applicant has undertaken a full Landscape and Visual Impact Assessment by Blue Marble Landscape Architecture. This LVIA includes a comprehensive assessment of the proposal in relation to the surrounding landform including the Timaru.

Our assessment is that the proposal is generally in accordance with the objectives and policies of Taiao Taiora, mainly because it is a well-managed, tightly controlled subdivision with thoughtful mitigation measures, consideration of the wider landscape and receiving environment, with no proximity to important waterways or taonga sites. Disposal of stormwater and wastewater to ground will assist with maintaining the health of the Timaru Catchment

8.1.6 OVERALL CONCULSION – TAIOA TAIROA

Overall we consider that the proposal meets with the requirements of Taiao Taiora and has actively responded to Taioa Taiora in the design response and layout of the subdivision and mitigation measures proposed. In light of this conclusion we have not consulted with Taranaki Iwi for this subdivision.

9.0 OPERATIVE DISTRICT PLAN

9.1 ACTIVITY STATUS

Overall, the application is a **Discretionary** activity under the operative New Plymouth District Plan.

9.2 OPERATIVE DISTRICT PLAN DEVELOPMENT CONTROLS ASSESSMENT

The application site is entirely within the Rural Environment Zone. We assess the relevant rules of the district plan below.

Rule	Applicable and Status	Assessment
Rur 7	Permitted	There are no buildings proposed close to new or existing boundaries
Rur 8	Permitted	There is no building proposed close to a road boundary
Rur 12	Permitted	No dwellings yet on Lot 2, one is proposed.
Rur 16	Permitted	No dwellings proposed near road boundary, 30m is achievable
Rur 17	Permitted	No dwellings proposed near side boundary, 15m is achievable.
Rur 18	Permitted	No buildings proposed near side boundary, 15m is achievable.
Rur 76	NA	No existing right of way.
Rur 78	Discretionary	This is the fifth subdivision of the Parent Title TN12/1100 (DP 15900). There is a 4ha balance. This is assessed in more detail below.
Rur 79	Controlled	Vehicle access along Upper Weld Road meets the requirements specified in Appendix 22.2A
Rule 81	Controlled	<u>Stormwater Disposal</u> Stormwater disposal to ground is anticipated. An Engineering report as a condition of consent is anticipated
Rule 81	Controlled	<u>Water Supply</u> Tank water stored from roof run off is anticipated as the solution for supplying potable water.

Rule 81	Controlled	Sewage Disposal Sewage disposal to ground is proposed. An Engineering report as a condition of consent is anticipated
Rule 82	Controlled	The proposed allotments are of size that can accommodate building platforms. An Engineering report as a condition of consent is anticipated.
Rule 83	Permitted	The proposed new boundaries are more than 10m from existing sheds.
Rule 84	Controlled	One additional title is being created; development contributions are anticipated.

9.3 RUR 78 - ASSESSMENT OF PARENT TITLE

The parent title is Lot 2 DP 16300 12.5447 ha, created in 1988 and contained in TN12/1100. We have reviewed historic subdivision since 1988 of that title and count the following **four** parcels as being created from this parent – Lot 1 DP 315057 (0.7455 ha), Lot 1 DP 328657 (0.8006 ha), Lot 2 DP 393350 (4.0616 ha) and Lot 1 DP 484251 (0.5329 ha) leaving a balance of Lot 2 DP 484251 (5.6251ha) – which is the application site.

It is also relevant to note that the adjoining parent title Lot 2 DP 15900 (TN 12/1100) 9.2795ha created in 1987 has also had subdivision – this being the following **three** parcels Lot 2 DP 432478 (1.2307ha), Lot 1 DP 500285 (0.5747ha) and Lot 2 DP 500285 (3.8058 ha) with a balance lot of Lot 1 DP 432478 (4.4766 ha).

These two parent parcels sum to 21.8342 ha, all of the new lots listed above add to 21.8535 ha, a difference of 200 sqm which is a rounding difference due to stream boundaries and illustrates that all land in the Parents has been accounted for here.

Overall, we consider that the proposed subdivision is the fifth smaller allotment from the parent, with a balance of > 4ha remaining in proposed Lot 2, thus we assess the proposal as meeting the **Discretionary Activity** standard of Rule 78 ODP.

9.4 RELEVANT ASSESSMENT CRITERIA

The following matters are considered to be relevant for assessment of non-compliances with rules 78:

9.4.1 RUR 78 – SUBDIVISION

Even through the application is fully discretionary, the relevant assessment criteria to Rule 78 do assist in determining the effects of the proposal.

Assessment criteria 1 to 35 are associated with Rules 76 to 84 of the ODP. The primary criteria are the effects of the subdivision on the ability to maintain Rural character (1) and whether the environment is spacious and maintains a low density build form and results in a low intensity of use (2). These criteria are fully assessed by Blue Marble in their LVIA which consider the site and development proposal in the context of the site, the neighbourhood and the wider receiving environment. In terms of Rule 78 I would direct the planner to now refer to the Blue Marble report and the assessment of Existing Landscape Context, Landscape Effects, Visual Effects, Overall significance of landscape and visual effects, evaluation of effects against relevant provisions and mitigation recommendations and conclusions.

Overall, the Blue Marble LVIA concludes that:

"With mitigation, the subdivision will not alter the area's rural character beyond a minor degree. Given that the proposal is discretionary, subdivision of this scale is anticipated in the ODP. Rural character is avoided through an identified building platform and the low magnitude of landscape change enabled by the subdivision. Effects on the visual amenity of properties within the viewing catchment are assessed as no greater than very low, (less than minor). Visual effects on users of Timaru Road will be no greater than very low, and negligible from Weld Road. With mitigation, the site and wider area's rural character values are maintained."

I would agree with all of the above conclusions from Blue Marble and would add that these conclusions are supported by the fact that all of the surrounding neighbours who could be considered affected have been consulted and provided their written approval to the proposal (see further below - Consultation).

9.5 ODP - RELVANT OBJECTIVES AND POLICIES

We assess the following objectives and policies of the Operative District Plan as being relevant.

O1 and P1.1, O4 and P4.1 and 4.2, 4.3,4.5 and 4.8, O20 and P20.1 and 20.7.

Blue Marble have provided a summary of the key Objectives and Policies as follows:

In the rural environment the key objective is to ensure that subdivision, use and development of land maintains the elements of rural character. This is to be achieved through polices controlling density, scale, location and design of subdivision, activities, and the habitable buildings.

Design of subdivision and development should be sensitive to the surrounding environment, and vegetation should be retained (particularly indigenous vegetation) and new vegetation used to mitigate effects.

Elements that help distinguish the differences between areas that are urban, from those that are rural:

- *Spaciousness*
- *Low Density*
- *Vegetated*
- *Production Oriented*
- *Working Environment*
- *Rural Based Industry*
- *Rural Infrastructure*

We would also add that activities within the rural environment should not generate traffic effects that will adversely affect Rural Character, that ensures *that the ROAD TRANSPORTATION NETWORK will be able to operate safely and efficiently, where the movement of traffic to and from a SITE should not adversely affect the safe and efficient movement of VEHICLES, both on-site, onto and along the ROAD TRANSPORTATION NETWORK, and subdivision should not adversely affect the safe and efficient operation of the ROAD TRANSPORTATION NETWORK*

Overall, based on the Assessment of Effects (below), we consider that the proposal, with the mitigation proposed, is not contrary to the Objectives and Policies of the ODP.

10.0 PROPOSED DISTRICT PLAN

10.1 RULES WITH LEGAL EFFECT

There are no rules with immediate legal effect within or adjoining the application site.

Rule	Applicable and Status	Assessment
WB-R6	N/A	The site is in the near vicinity but sufficiently distant and does not legally adjoin the Timaru Stream.

10.2 RELEVANT OBJECTIVES AND POLICIES OF THE PROPOSED DISTRICT PLAN

As this proposal is a Discretionary activity under the ODP, the following objectives and policies of the PDP are relevant:

Objective SUB-02 and Policies SUB-P12, SUB-P13 and SUB-P14 outline the following overarching planning outcomes relevant to the scheme:

OBJECTIVE SUB-02 Subdivision is designed to avoid, remedy or mitigate adverse effects on the environment and occurs in a sequenced and coherent manner that:

1) responds positively to the site's physical characteristics and context.

2) is accessible, connected and integrated with the surrounding neighbourhoods.

3) contributes to the local character and sense of place.

4) recognises the value of natural systems in sustainable stormwater management and water sensitive design; and

5) protects or enhances natural features and landforms, waterbodies, indigenous vegetation, historic heritage, sites of significance to tangata whenua, and/or identified features; and

6) provides accessible and well-designed open space areas for various forms of recreation, including sport and active recreation, for the health and wellbeing of communities.

POLICY SUB-P12 Ensure that subdivision in the Rural Zones results in lot sizes

and lot configurations that:

1) are appropriate for the development and land use intended by the zone.

2) are compatible with the role, function and predominant character of the zone.

3) maintain rural character and amenity; and

4) are consistent with the quality and types of development envisaged by the zone objectives and policies, including by minimising any reverse sensitivity effects and/or conflict with activities permitted in the zones.

POLICY SUB-P13 Require subdivision design and layout in the Rural Zones to respond positively to, and be integrated with the surrounding rural or rural lifestyle context, including by:

1) incorporating physical site characteristics, constraints and opportunities into subdivision design.

2) minimising earthworks and land disturbance by designing building platforms that integrate into the natural landform.

3) avoiding inappropriately located buildings and associated access points including prominent locations as viewed from public places.

4) incorporating sufficient separation from zone boundaries, transport networks, rural activities and rural industry to minimise potential for reverse sensitivity conflicts.

5) incorporating sufficient separation between building platforms and identified features to minimise potential adverse effects on those features.

6) considering whether a subdivision has the potential to compromise cultural, spiritual and/or historic values and interests or associations of importance to tangata whenua, and if so, also considering the outcomes of any consultation with and/or cultural advice provided by tangata whenua and:

7) opportunities to incorporate mātauranga Māori principles into the design and/or development of the subdivision.

8) opportunities for tangata whenua's relationship with ancestral lands, water, sites, wāhi tapu and other taonga to be maintained or strengthened; and

9) options to avoid, remedy or mitigate adverse effects.

10) promoting sustainable stormwater management through water sensitive design solutions.

and

11) in the Rural Lifestyle Zone, achieving patterns of development and allotment sizes that provide opportunities for rural lifestyle living.

POLICY SUB-P14 Ensure that rural subdivision in the Rural Lifestyle or Rural Production Zones maintains or enhances the attributes that contribute to rural character and amenity values, including:

1) varying forms, scales, spaciousness and separation of buildings and structures associated with the use of the land.

2) maintaining prominent ridgelines, natural features and landforms, and predominant vegetation of varying types.

3) low population density and scale of development relative to urban areas.

4) on-site servicing and a lack of urban infrastructure; and

5) in the Rural Production Zone, the continued and efficient operation of rural activities and productive working landscapes.

In the assessment of Effects section below and in the LVIA of Blue Marble, the assessment is cognisant of the above policy direction. Methods to avoid, mitigate, and/or remedy potential adverse effects incorporate the intent of the objectives and policies above, evidence of this includes prescription of building

platform areas, separation between buildings and neighbours, rural type fences and low reflectivity of colours, low height of new dwellings. The proposal fits with the local neighbourhood and surrounding area.

10.3 OVERALL CONCLUSION – REVEVANT OBJECTIVES AND POLICIES PDP

Overall, we consider the proposal is supported by Objectives and Policies for the Subdivision provisions of the PDP.

11.0 ASSESSMENT OF EFFECTS

11.1 LANDSCAPE AND VISUAL

For a full and comprehensive assessment of the Landscape and Visual effects of the proposal, we refer to the LVIA report by Blue Marble, please refer to their LVIA.

We agree with the conclusions of the LVIA of Blue Marble.

11.2 INFRASTRUCTURE

Proposed infrastructure is small in scale and the subdivision is generally un-serviced with a lack of urban INFRASTRUCTURE to an extent typical of the rural environment.

There are no community costs associated with upgrading INFRASTRUCTURE due to increased allotments.

11.3 CUMULATIVE EFFECTS

A full assessment of potential Cumulative effects has been made by Blue Marble in their LVIA, we request that the reader refers to Section 7 of the LVIA.

The conclusion of the LVIA in relation to Cumulative effects is as follows: *"Because the area contains a high number of rural residential sized allotments, the question of cumulative effects arises. However, the character of this area is defined by these smaller allotments, so the proposal is consistent with this character and does not tip it to another character type. The configuration of the proposal is helpful in this regard as the new lot boundaries follow topography and the new dwelling platform location is specified. There will be no sequential effects as the proposal is not visible form Weld Road and is indistinct from Timaru Road. Combined effects are also limited by the lack or visibility from public locations."*

We agree with that conclusion that Cumulative effects are not anticipated to be adverse in this location.

11.4 ALTERNATIVE LAYOUT OPTIONS

Alternative schemes have been considered but these have been refined and adapted based on frank consultation with surrounding neighbours. The final scheme being presented is the best layout for the site and has the full support of the landowners and the applicants.

11.5 EFFECTS ON NATURAL FEATURES, SIGNIFICANT NATURAL AREAS

This subdivision is in the wider catchment of the Timaru Stream but is not physically in close proximity to the stream and does not contain any contributing waterbodies to that stream. With Lot 2 being a large enough allotment (5.6ha), we assess the potential adverse effects on the stream (from septic tank, water run-off, visual and cultural) to be less than minor. This has been fully addressed earlier in this report.

11.6 ALLOTMENT SIZE AND COMPLIANT DWELLINGS

The size of Lots 1 and 2 are sufficient in both width and depth to enable fully compliant permitted activity dwellings and sheds to be located on these sites.

11.7 PRECEDENT FOR FURTHER SUBDIVISION

Given this application is a Discretionary activity, precedent effects can be taken into account. The test for whether precedent effects exist is:

"Is it more likely than not that, if consent was granted, other applications for similar proposals would be granted (to such a degree that an adverse effect is caused)".

In our opinion the site is unique and does not provide likely opportunity for others to claim they have a similar proposal. That is because:

Visual Context: The site is located among a cluster of lifestyle block type properties, in a wider rural environment, but within close travel time of the Oakura township and associated services.

The proposal is a continuation of this pattern, noting that there are mixed sizes along Lower Weld Road. Therefore one uniqueness aspect of this site is its cluster of smaller rural lots as part of a transitional pattern from small to large lots. This cluster of lots is not visible from Weld Road and only partially visible from Timaru Road (at distance).

Amenity Context: The site is in close proximity to Oakura Village which provides a school, shops, restaurants, businesses, surfing and surf-lifesaving clubs and other amenities within walking and cycling distance of the proposed subdivision.

Mitigation: Proposed mitigation measures are specific to the proposal and constrain built form in ways not required for controlled subdivision. In particular,

the house site is precisely prescribed, height and colour of buildings is controlled, rural fences are prescribed.

For all of the reasons outlined above, we do not consider this proposal likely to create a precedent throughout the rural district of New Plymouth.

11.8 TRAFFIC EFFECTS

The following assessment criteria are relevant for assessing the traffic effects of the proposal.

Whether appropriate vehicle access can be provided and consideration towards the location of DRIVEWAYS.

Consideration towards the design and location of access via a RIGHT OF WAY and alternatives to the RIGHT OF WAY.

Effects on existing traffic levels, the ROAD TRANSPORTATION NETWORK, the rural ROAD HIERARCHY, ROAD widening, access, stormwater management, POTABLE WATER supply, and wastewater reticulation.

Response: Both vehicle access points are onto a good straight road with excellent visibility in both directions. We consider that the road has ample capacity to absorb the additional traffic from one additional habitable dwelling.

12.0 ASSESSMENT OF EFFECTS OVERALL CONCLUSION

Overall we consider that the adverse effects of the proposal on the environment (other than any affect to which the affected parties' consent has been given), is no more than minor. And when the proposed mitigation measures are applied, we consider that the adverse effects will be less than minor.

13.0 RESOURCE MANAGEMENT ACT 1991

13.1 PART 2 OF THE RMA

The Council is required to consider the application in relation to the purpose and principles of the Resource Management Act 1991 which are contained in Sections 5 to 8 of the Act, inclusive.

13.1.1 SECTION 5 - PURPOSE

The purpose of this Act is to promote the sustainable management of natural and physical resources. In this Act, sustainable management means managing the use, development, and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their

social, economic, and cultural well-being and for their health and safety while— (a) sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and(b) safeguarding the life-supporting capacity of air, water, soil, and ecosystems; and(c) avoiding, remedying, or mitigating any adverse effects of activities on the environment.

We assess the proposal meets the purpose of the Act by producing a development which enables people and communities to provide for their social, economic and cultural well-being while sustainably using limited land supply in a way that avoids or mitigates adverse effects.

13.1.2 SECTION 6 – MATTERS OF NATIONAL IMPORTANCE

In achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall recognise and provide for the following matters of national importance: ***(a)*** *the preservation of the natural character of the coastal environment (including the coastal marine area), wetlands, and lakes and rivers and their margins, and the protection of them from inappropriate subdivision, use, and development:* ***(b)*** *the protection of outstanding natural features and landscapes from inappropriate subdivision, use, and development:* ***(c)*** *the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna:* ***(d)*** *the maintenance and enhancement of public access to and along the coastal marine area, lakes, and rivers:* ***(e)*** *the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga:* ***(f)*** *the protection of historic heritage from inappropriate subdivision, use, and development:* ***(g)*** *the protection of protected customary rights:* ***(h)*** *the management of significant risks from natural hazards.*

We assess that the proposal does not adversely affect any of the matters of national importance raised in Section 6.

13.2 SECTION 7 – OTHER MATTERS

In achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall have particular regard to— (a) kaitiakitanga: (aa) the ethic of stewardship: (b) the efficient use and development of natural and physical resources: (ba) the efficiency of the end use of energy: (c) the maintenance and enhancement of amenity values: (d) intrinsic values of ecosystems: (e) [Repealed] (f) maintenance and enhancement of the quality of the environment: (g) any finite characteristics of natural and physical resources: (h) the protection of the habitat of trout and

salmon: (i) the effects of climate change: (j) the benefits to be derived from the use and development of renewable energy.

We assess that the proposal has been mindful of the Other Matters listed in Section 7 particularly with regards to the efficient use and development of natural and physical resources, maintains and enhances the quality of the environment, maintains and enhances amenity values, and that the receiving environment is suitable to receive the change required to develop the site.

13.2.1 SECTION 8 - TREATY OF WATIANGI

In achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall take into account the principles of the Treaty of Waitangi (Te Tiriti o Waitangi).

We assess that the proposal has been mindful of the principles of the Treaty of Waitangi and the applicant has made an assessment of the project against the principles of the Taranaki Iwi Environmental Management Plan.

13.2.2 PART 2 OF THE ACT - SUMMARY

In Summary, and for all of the reasons stated in this application, the proposal is considered to achieve the purpose of the Act. We conclude that the purpose of the Act is met by granting rather than refusing this consent.

13.3 S. 104(3) OF THE ACT - CONSULTATION

With the design and location of this subdivision, and the mitigation measures proposed by Blue Marble have assessed that there are no private properties potentially affected (landscape and visual effects) by the proposal, that public viewing audience from Weld Road is "negligible" and from Timaru Road is "very low".

The current landowners have lived on their property for many years and have opted to approach all of their neighbours who have an existing dwelling and who would potentially be the most affected by the proposal. The following neighbours have been consulted.

Owner	Postal (contact) Address	Appellation
Greg and Katy Sheffield	271 Weld Road Lower	Lot 1 DP 315057

Angela and Steven Blair	247c Weld Road Lower	Lot 1 DP 500285
Hackling Family Trust	247b Weld Road lower	Lot 2 DP 432478
Lisa Vale and Robert Bateman (Stoney Bay Trustee Ltd)	283 Weld Road Lower	Lot 2 DP 486355
Chris Waugh (Fis Trees Limited)	247 Weld Road Lower	Lot 2 DP 393350
Beth and Neil Bentall	255 Weld Road Lower	Lot 1 DP 484251
Nick King and Sioban Luttrell	247a Weld Road Lower	Lot 2 DP 500285

We note that the owner of Lot 1 DP 432478 has not been approached for written approval as that site is vacant and potential building platforms on that site are at the northern end towards the bend in the river (i.e. adjacent the western boundary of Lot 2 DP 486355), so there would be no visual connection and significant separation distance between the new dwelling on Lot 2 hereon and the eventual dwelling on Lot 1 DP 432478 (refer Figures 9 and 10 of Blue Marble LVIA).

14.0 S106 OF THE RMA

S106 of the RMA requires an assessment of significant risk from natural hazards.

No engineering report has yet been undertaken for suitability of Lot 2 for subdivision and this is anticipated to be a condition of consent.

We note that Lot 2 is sufficiently elevated up above the Timaru Stream and sufficiently setback from the bank of the river such that flooding of the Stream would not be risk to Lot 2. Management of surface water over Lot 2 during rain events (i.e. consideration of overland flow) will be considered by the Engineering report as a condition of consent, as would stable building platform.

We have no reports on soil conditions on site but note the good range of house locations in the near vicinity and the large allotment size of Lot 2, and the familiarity of the applicant to the lot 2 land, so expect the risk of poor ground to be relatively low – again this will be confirmed by engineering investigation as a condition of consent.

15.0 OTHER STATUTORY PROVISIONS

15.1 NATIONAL POLICY STATEMENT – FRESHWATER MANAGEMENT 2020

The NPS-FW 2020 provides guidance for the use and management of Freshwater in New Zealand.

The relevant requirements of the NPS-FW for rural subdivision consideration are:

- Manage freshwater in a way that 'gives effect' to Te Mana o te Wai
- Improves degraded water bodies, and maintain or improve others
- Avoid further loss or degradation of wetlands and streams
- Address in-stream barriers to fish passage
- 'Essential Freshwater' is a national direction to protect and improve NZ's rivers, streams, lakes and wetlands. Te Mana o te Wai refers to "the fundamental importance of water and recognises that protecting the health of freshwater protects the health and well-being of the wider environment. It protects the mauri of the wai. Te Mana o te Wai is about restoring and preserving the balance between the water, the wider environment, and the community"
- The hierarchy of obligations in Te Mana o te Wai are:

  a) first, the health and well-being of water bodies and freshwater ecosystems

  b) second, the health needs of people (such as drinking water)

  c) third, the ability of people and communities to provide for their social, economic, and cultural well-being, now and in the future.

Overall we consider the proposal to be in accordance with the NPS-FW 2020.

15.2 REGIONAL POLICY STATEMENT (RPS 2010)

The RPS 2010 was developed by the Taranaki Regional Council to provide a high-level strategic direction for the Council and wider community to achieve the purposes of the Act.

Part B of the RPS sets a series of Resource Management Issues, being Land and soil, Freshwater, Air and climate change, Coastal Environment, Indigenous Biodiversity, Natural Features and Landscapes, Historic Heritage and Amenity Value, Natural Hazards, Waste Management, Minerals, Energy and the Built Environment.

Of these, we consider that the following are relevant to this proposal – Land and Soil (Part 5), Freshwater (part 6), Amenity Value (Part 10.3).

In relation to Land and Soils (Part 5), the application is generally in accordance with the Policy Statement because it does not accelerate erosion, maintains health soils and does not cause new hazardous substances and contamination.

In relation to Freshwater (Part 6), the application is generally in accordance with the Policy Statement because it maintains and enhances the quality of water in the Timaru catchment through controls over design and use of septic tank systems and through setting back the building platform from the river.

In relation to Amenity Values (part 10.3) the following Policy is relevant

AMY POLICY 1

The adverse effects of resource use and development on rural and urban amenity values will be avoided, remedied or mitigated and any positive effects on amenity values promoted. Any positive effects of appropriate use and development will be fully considered and balanced against adverse effects.
Those qualities and characteristics that contribute to amenity values in the Taranaki region include:
(a) safe and pleasant living environment free of nuisance arising from excessive noise, odours and contaminants, and from traffic and other risks to public health and safety; (b) scenic, aesthetic, recreational and educational opportunities provided by parks, reserves, farmland, and other open spaces, rivers, lakes, wetlands and their margins, coastal areas and areas of vegetation; (c) a visually pleasing and stimulating environment; (d) efficient, convenient and attractive urban forms; and (e) aesthetically pleasing building design, including appropriate landscaping and signs.

We consider that the proposed subdivision, with mitigation measures proposed and habitable building location restriction (to manage visual effects) is in accordance with Policy 1, because it does not compromise the safe and pleasant living environment in this locality, is not susceptible to creating new reverse sensitivity concerns, manages traffic and access matters, enables a visually pleasing housing platform that is efficient, convenient and attractive.

15.3 REGIONAL FRESHWATER PLAN 2001

The Regional Freshwater Plan 2001 sets Objectives, Policies and Rules in relation to Freshwater. Our assessment is the proposed subdivision is a Permitted Activity in relation to the Rules of the plan because no waterways, beds or wetlands need to be altered, modified or culverted to enable access to the new allotment, and discharges to ground arising from earthworks for development of the site are anticipated well below the trigger quantities (1ha and 3000 cu m) specified in the plan and can be managed through appropriate site methods to avoid silt run-off into the waterways.

16.0 OTHER CONSENT REQUIREMENTS

16.1 OTHER CONSENT AUTHORITIES

No consents are required from any other authorities for this proposal.

17.0 OTHER MATTERS

17.1 NEW EASEMENTS AND ENCUMBRANCES

No new easements are proposed.

New Consent Notices are required as conditions of consent, these should cover the items listed in Section 3 of this report.

New Land Covenants are proposed but these are a private matter between adjoining landowners and should not be made a condition of consent.

A new amalgamation condition is required so that new lot 3 is amalgamated with Lot 1 DP 315057

18.0 FINANCIAL CONTRIBUTIONS

One additional title is being created by this proposal, and financial contributions are anticipated.

19.0 DURATION OF RESOURCE CONSENT

The Act prescribes a standard consent period of five years, but this may be amended as determined to be appropriate by the Council. It is requested that the standard five-year provision be applied in this case.

20.0 OVERALL CONCLUSION

The applicant seeks resource consent for a two-lot subdivision on 249 Weld Road Lower, in the rural zone.

The proposal is considered to be a suitable use of the site, and one that is in accordance with the relevant objectives, policies and assessment criteria of the Operative District Plan.

For all of the reasons set out in this application, the proposal is also considered to be consistent with the purpose and principles of the Act. The granting of the resource consent for the proposal would provide for an appropriate use of the site with no more than minor adverse effects on the environment, and ultimately achieves sustainable management.

In accordance with section 104B of the Act, it is considered appropriate for consent to be granted subject to fair and reasonable conditions.

21.0 APPLICATION FEES

An invoice for Lodgement fees of should be made out to the applicant, c- Taylor Patrick Limited PO Box 8258 New Plymouth.

22.0 LIMITATIONS

Please note that this report is restricted to District planning matters only, and no assessment of engineering or surveying constraints to the development of the property has been undertaken.

This report has been prepared for the particular project described, and no responsibility is accepted by Taylor Patrick Limited or its directors, servants, agents, staff, or employees for the use of any part of this report in any other context or for any other purpose.

This assessment is for use by Taylor Patrick Limited and Tracey Beaton only and should not be used or relied upon by any other person or for any other project.

Notes:

Note: Lots 1 & 2 hereon are subject to Consent Notice 10058782.2

- No habitable dwellings shall be erected outside of Area E within Lot 1 hereon.

- No habitable dwellings shall be erected outside of Area Z within Lot 2 hereon.

-Area X - Proposed Land covenant with Lot 1 DP 315057 - maximum height of vegetation within Area X - 2m

Areas AA and Y - Proposed land covenant with Lot 1 DP 484251 - maximum height of vegetation within Areas AA and Y - 2m

Amalgamation Condition: That Lot 3 hereon be held together with Lot 1 DP 315057 and one registered title issued herewith.

Signed: .....

Date: .....

Schedule of Proposed Lot Areas

Appellation	Current Area	CT Reference	Proposed Area
Lot 2 DP 484251	5.6251ha (more or less)	685707	
Lot 1 Hereon			1.3458ha (more or less)
Lot 2 Hereon			4.1578ha (more or less)
Lot 3 Hereon			0.1219ha (more or less)
Totals	5.6251ha (more or less)		5.6255ha (more or less)

Schedule of Existing Easements

Purpose	Shown	Burdened Land	Document Number
Right to convey electricity	Areas B & C DP 484251	Lot 1 Hereon	EC 360024.3
Right to convey water	Area D DP 484251	Lot 2 Hereon	9675676.2

Schedule of Existing Easements in Gross

Purpose	Shown	Burdened Land	Document Number
Right to convey electricity	Area B DP 500285	Lot 2 DP 500285	7772567.2
Right to convey telecommunictaions and computer media			7772567.3

This Plan to be used for Resource Consent Purposes Only
Area and Dimensions are subject to Land Transfer Survey

TAYLOR PATRICK
SURVEYING PLANNING DESIGN
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REV	AMENDMENT	BY	DATE
03	Added Areas Y and AA	SK	13/10/21
02	Add Lot 3 and Area X	TB	30/09/21
01	Move driveway for Lot 2	TB	23/09/21

Beaton
249 Weld Road Lower
Tataraimaka

Lots 1 to 3 being a proposed subdivision of Lot 2 DP 484251

DESIGNED:	DATE:	SIGNATURE:	PLOT DATE: 30/09/21
DRAWN: TB	DATE: 17/08/21	SIGNATURE:	CAD REF:
CHECKED:	DATE:	SIGNATURE:	CAD XREF:
APPROVED:	DATE:	SIGNATURE:	SURVEY BY: not surveyed
			SURVEY DATE:
			12D REF:

PLOT STATUS: For Neighbours Approval

PROJECT NUMBER: 21089 | SCALES: 1:1250 @ A3

DRAWING No: 100 | REV: 03

c:\12dS\data\GRAEMEPC\21089-249 Weld Road_203\300 Working\21089 Scheme.12dmodel 21089 Scheme Wed Oct 13 17:07:30 2021

8 December 2021

Landscape and Visual Impact Assessment

Three Lot Subdivision

Lots 1 to 3 being a proposed subdivision of Lot 2 DP 484251

249 Weld Road Lower, Tataraimaka

LANDSCAPE ARCHITECTS NP .NZ. EST.1992

bluemarble
A world of difference

Client:	Beaton
Project:	Three Lot Subdivision 249 Weld Road Lower, Tataraimaka
Report:	Landscape and Visual Effects
Status:	Planner Review
Date:	8 December 2021
Author:	Richard Bain
	bluemarble
	New Plymouth
	richard@bluemarble.co.nz

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Figure 2: Proposed District Plan (PDP)

Figure 3: Operative District Plan (ODP)

Figure 4: Viewing Audience

Figure 5: First view towards site from Weld Road Lower

Figure 6: View into proposed Lot 2 from southern end of Lot

Figure 7: View north from dwelling on site

Figure 8: View into Lot site along proposed accessway to Lot 2

Figure 9: View of building area on Lot 2 looking south-west

Figure 10: View of site from Timaru Road Lower

Figure 11: Subdivision Scheme Plan (Taylor Patrick Surveyors)

1. INTRODUCTION

1.1. This report assesses the landscape and visual effects of a proposed three lot subdivision at 249 Weld Road Lower, Tataraimaka.

1.2. The Applicant has engaged Bluemarble to prepare this landscape and visual impact assessment (LVIA).

1.3. The Subdivision Scheme Plan and Consent Application has been prepared by Taylor Patrick Surveyors.

1.4. The purpose of this report is to identify and assess the significance of effects resulting from development on landscape character and people's visual amenity.

1.5. This report addresses matters pertaining to character and amenity as outlined in the New Plymouth District Plan.

Issue 4: Loss or reduction of rural amenity.

Resource Management Act (RMA).

2. METHODOLOGY

2.1. This assessment is based the New Zealand Institute of Landscape Architects (NZILA) Draft Aotearoa Guidelines (*Te Tangi A Te Manu*) for assessment concepts and principles.

2.2. The following has been undertaken:

- A visit to the site and surrounding area.
- Desktop collation of the site and local area information.
- Information from the Application.
- Referenced relevant NPDC Operative District Plan provisions.
- Referenced relevant Proposed District Plan provisions.
- Assessment against Statutory provisions.
- Recommended mitigation measures where effects are identified, and amelioration is possible and appropriate.

2.1. Abbreviations used in the report.

NPDC	New Plymouth District Council
ODP	Operative District Plan
PDP	Proposed District Plan
LVIA	Landscape and Visual Impact Assessment
TRC	Taranaki Regional Council

3. PROPOSAL

3.1. This assessment relies on the project description in the Application, but the following aspects are pertinent to potential landscape effects.

3.2. The proposal is to create a three lots from Lot 2 DP 484251, which is 5.6251 hectares in area - see Taylor Patrick Surveyor Subdivision Scheme Plan - **Graphic Supplement Figure 11**.

Proposed Titles
Lot 1: 1.3458 hectares
Lot 2: 4.1578 hectares
Lot 3: 0.1219 hectares
Lot 3 will be amalgamated with Lot 1 DP 315057.

3.3. The proposal is a ***discretionary activity*** under the ODP.

3.4. The **Graphic Supplement** of this report contains relevant ODP and PDP maps as well as a Site photographs, which informs a number of the proposed mitigation measures.

4. STATUTORY PROVISIONS (LANDSCAPE & VISUAL)

4.1. The Application includes a full review of the relevant policies and objectives. This LVIA is cognisant of the relevant statutory provisions in framing this assessment.

4.2. A summary of the most pertinent provisions follows.

Operative New Plymouth District Plan Policies and Objectives

4.1. In the rural environment the key objective is to ensure that subdivision, use and development of land maintains the elements of rural character. This is to be achieved through polices controlling density, scale, location and design of subdivision, activities, and the habitable buildings.

4.2. Design of subdivision and development should be sensitive to the surrounding environment, and vegetation should be retained (particularly indigenous vegetation) and new vegetation used to mitigate effects.

4.3. Elements that help distinguish the differences between areas that are urban, from those that are rural:

- Spaciousness
- Low Density
- Vegetated
- Production Oriented

- Working Environment
- Rural Based Industry
- Rural Infrastructure

Operative New Plymouth District Plan (ODP) - Non Compliance

4.4. For this proposal the relevant ODP rules pertaining to landscape and visual matters are:

Rule	Parameter
Rur 78	Minimum allotment size

4.5. As a ***Discretionary Activity (Rur 78),*** the following ODP assessment criteria are relevant.

Rule	Assessment Criteria
Rur 78	*1) The effects of the subdivision on the ability to maintain RURAL CHARACTER* *2) Whether the environment is spacious and maintains a low density built form and results in a low intensity of use typical of rural areas.* *3) If there is a large balance area and whether the balance area and/or the subdivided ALLOTMENTS ensures the continued production orientated nature of RURAL CHARACTER.* *4) Consideration towards the number of ALLOTMENTS proposed and if they will lead to intensive land uses that are not typical of RURAL CHARACTER;* *5) Whether the subdivision and resulting built form will be highly visible in the landscape or whether this can be avoided, remedied or mitigated by the placement of identified BUILDING platforms or other design and layout considerations.* *6) Design and visual treatment of the subdivision and resulting development including consideration towards techniques such as softening with vegetation, screening, planting, boundary treatment and BUILDING and STRUCTURE design, and the use of materials, colour and reflectivity.* *7) The subdivision and resulting BUILDING platforms do not require substantial EXCAVATION and FILLING and consideration towards reinstatement.* *8) Whether INFRASTRUCTURE is small in scale and that the subdivision is generally un-serviced with a lack of urban INFRASTRUCTURE to an extent typical of the rural environment.* *9) Whether there are significant community costs associated with upgrading INFRASTRUCTURE due to increased ALLOTMENTS.* *10) The cumulative effects of the subdivision.* *11) Whether alternatives to the subdivision have been considered including location, sizes and the number of ALLOTMENTS.* *12) Whether appropriate vehicle access can be provided and consideration towards the location of DRIVEWAYS.* *18) Effects of ALLOTMENT size and shape on the RURAL CHARACTER of the area, amenities of the neighbourhood and the potential efficiency and range of uses of the land.* *19) Whether the subdivision will lead to increased land use conflicts and reverse sensitivity concerns.* *23) Whether the size of the ALLOTMENTS enables use of them in compliance with the relevant rules of the plan for permitted activities or standards and terms for controlled activities (i.e. setback requirements, etc).* *30) The extent to which public space areas for recreation, conservation, or pedestrian/cycle access purposes are provided for.*

Proposed New Plymouth District Plan (PDP)

4.6. The site is zoned Rural Production Zone under the PDP.

4.7. There are no aspects of the site that have legal effect under the PDP.

Statutory Acknowledgement Areas

4.8. The site is within a Statutory Acknowledgement Area for Taranaki iwi.

4.9. The Taranaki Iwi Environmental Management Plan **Taiao, Taiora** under issues 1.9 and 14 cover matters regarding potential impacts on iwi values from subdivision and development (see Appendix iii).

4.10. Ngā Māhanga a Tairi is identified as mana whenua.

5. EXISTING LANDSCAPE

Context and Situation

5.1. The Application describes the site and its context; therefore, the following description is a brief summary in the context of those elements that inform the assessment of potential landscape and visual effects.

5.2. The property is located west of Oakura is an area traditionally dominated by dairy farms but has become increasingly popular for rural-residential living. The wider environment is still overwhelmingly pastoral but along roads leading to the sea (e.g.. Ahu Ahu, Weld, Timaru) smaller lot subdivision has become common.

5.3. The site is a 5.6251 hectare property within a section of Weld Road that includes a number of smaller Lots. Within close proximity to the site there are nine properties smaller than 4.6 hectares. Four of these are less than 1.2 hectares in area.

- 255 Weld Road Lower 0.5329 hectares
- 271 Weld Road Lower 0.7455 hectares
- 235 Weld Road Lower 0.8006 hectares
- 247 Weld Road Lower 4.0616 hectares
- 247A Weld Road Lower 3.8058 hectares
- 247B Weld Road Lower 1.2037 hectares
- 247C Weld Road Lower 0.5747 hectares
- Lot 1 DP 432478 4.4766 hectares
- 283 Weld Road Lower 4.5276 hectares

5.4. Within in this group is an enclave of smaller lots (see **Graphic Supplement** - **Figure 1: Site Context**) located in the bottom of the Timaru Stream valley. These properties are atypical, as most smaller lots in the local and wider area are located immediately adjacent to roads.

5.5. The site itself comprises a range of landscape elements as its extents from the road to a lower river flat. The transition between these levels is a sloped embankment. This topographical change is also the delineator for the proposal, as Lot 1 comprises the site's elevated land associated with Weld Road, and Lot 2 comprises the lower level.

5.6. In terms of built elements, the site contains an existing dwelling accessed off Weld Road but separated from it by 255 Weld Road Lower. The dwelling has elevated views north-west (see **Graphic Supplement** - **Figure 1: Site Context**). There are two sheds on the property, one near the southern boundary and one tucked into the embankment northwest of the dwelling.

5.7. In terms of biophysical elements, the land comprises pasture and a few trees scattered on the elevated land near the road. There is a dense band of bamboo that runs along the road boundary of 255 Weld Road Lower and continues north along the site boundary.

5.8. The defining aspect of the site is that it is two landscape units - the elevated land adjacent to the road (proposed Lot 1) and the lower level that falls towards the Timaru Stream (proposed Lot 2). In this regard the subdivision lines reflect the underlying landscape.

6. LANDSCAPE AND VISUAL EFFECTS

Character

6.1. Potential effects from the proposal result from the creation of Lot 2, as this enables an additional dwelling. The extent of change to Lot 1 is negligible given the existing dwelling - the only perceptual change occurring from the creation of the accessway into Lot 2 that runs along the southern side of 271 Weld Road Lower. The location of any future dwellings on Lot 1 are restricted to being within Area E on the Subdivision Scheme Plan. While the ODP limits any additional dwelling on this lot to being with 25m of the existing dwelling (Rur 12), Area E on the Scheme Plan provides long term certainty that dwellings will not occur within other parts of the Lot.

6.2. Lot 3 will also create negligible effects as it is a small lot that will be amalgamated with Lot 1 DP 315 057 (271 Weld Road Lower).

6.3. Effects from the creation of Lot 2 are reduced by the identification of a Proposed Building Platform (Area Z on the Subdivision Scheme Plan). This tucks the dwelling towards the embankment and prevents the wider open space of Lot 2 being built on. The accessway represents a small change and in combination with the dwelling creates a very low effect on landscape character. The loss of spaciousness is very small and will not be perceived beyond the neighbouring properties. As a discretionary subdivision this degree of landscape change is will within the parameters that are anticipated.

6.4. In terms of productivity, the conversion of loss of pasture is negligible.

Landform

6.5. The only potential changes to landform will occur from the creation of the building platform on Lot 2 and its accessway which will connect road level with any future dwelling - most likely partially tucked into the embankment. This will require earthworks to create a suitable gradient and building platform. Without knowing the building platform level, the extent of earthworks is unknown but given the underlying topography they are unlikely to be significant. To ensure that such earthworks do not create adverse effects mitigation measures are recommended - see chapter 7.

6.6. Potential effects on landform are assessed as very low.

Cumulative Effects

6.7. Cumulative effects are those that in conjunction with those of previous development 'tip' this environment to another character type. The ODP does not provide any benchmark by which to measure effects against, nor is there anything to suggest that this environment is at capacity.

6.8. Because the area contains a high number of rural residential sized allotments, the question of cumulative effects arises. However, the character of this area is defined by these smaller allotments, so the proposal is consistent with this character and does not tip it to another character type. The configuration of the proposal is helpful in this regard as the new lot boundaries follow topography and the new dwelling platform location is specified. There will be no sequential effects as the proposal is not visible form Weld Road and is indistinct from Timaru Road. Combined effects are also limited by the lack or visibility from public locations. Visual effects of the proposal follow.

Visual Effects

Private Viewing Audience

6.9. The visual catchment for this site show in **Figure 4** of the **Graphic Supplement.** This includes properties that contain dwellings (and therefore identifiable amenity areas) and properties that do not presently contain dwellings but could do so as permitted activity.

6.10. There are three main private view positions that may have views of the proposal - those located along Weld Road Lower that neighbour the site, the enclave located below the site near the Timaru Stream, and the elevated land on the western side of the river.

6.11. For the properties that neighbour the site on Weld Road Lower, only one has the potential to see any future effects enabled by the subdivision - 255 Weld Road, which will be amalgamated with Lot 3. The Subdivision Scheme Plan also includes a vegetation height limit (Area X) to protect views for this property. Similarly, for 271 Weld Road Lower, Area AA has been created to limit vegetation. Clearly, the applicant has negotiated these matters with these properties and created an agreed outcome. Given this, and the potential visibility from these properties, the level of visual effect is assessed as

negligible. 235 Well Road Lower will not experience any visual effects as illustrated in **Figure 5** of the **Graphic Supplement** which is taken just outside this property.

6.12. The enclave of properties that lie between the site and the Timaru Stream comprise four properties with dwellings and one without (Lot 1 DP 432478). These properties are shown in **Figure 4** of the **Graphic Supplement** as D—I, and in **Figures 9 & 10** their position and visibility are also shown.

6.13. These properties all have a potential view of the dwelling on Lot 2 to varying extents. None of the properties will experience an open view, due to intervening vegetation, topography, or orientation. The closest property is 247B Weld Road Lower but there are no views of any significance. 247A has the most open view but is 220m away across an intervening property and 247C is oriented to the north-west with only peripheral views that are at least 200m from the proposed building area. A future dwelling on Lot 1 DP 432478 could potentially see the proposal but it in any event a dwelling will be at least 250m away and like to be orientated away from the site. Taking these factors into consideration there are no properties within this enclave where the visual impact from any amenity area (e.g., dwelling or outside living area) is greater than **very low**.

6.14. The western side of the Timaru Stream opposite the site is a farm block with an address of 147 Weld Road Lower. The archaeological site (ID 42) is located within this property. There are open elevated views from this farm towards the site, but they are from a working farm and not amenity areas. There are also intervening properties upon which permitted activity could impact on views of the site. Therefore, visual effects on 147 Weld Road Lower area assessed as very low.

6.15. This assessment considers that there are no private properties potentially affected (landscape & visual effects) by the proposal.

Public Viewing Audience

6.16. Public views of the proposal are potentially available from Timaru Road and Weld Road. As shown in **Figure 10**, there are open views from Timaru Road towards the site. However, these views are in specific location and not of a continuous nature. The views are also peripheral to the line of travel with the proposal a distant element. There are also other dwellings within the view. Therefore, the visual effect from Timaru Road Lower is assessed as **very low**.

6.17. From Weld Road the site is not visible from either approach apart from a glimpse view into Lot 1 where there is an access gate - these views otherwise prevented by the line of roadside bamboo. Even its this bamboo was removed, there would be no views of the dwelling on Lot 2, or the existing dwelling on Lot 1. Given this, the visual effects from Weld Road Lower are assessed as **negligible**.

Evaluation of Effects against Relevant provisions

6.18. The ODP assessment criteria for Rural Rule 78 is addressed through the scale and nature of the subdivision. The scale of this proposal is very small in terms of effects (essentially one house), and the nature of the proposal is anticipated in the ODP. Two lifestyle sized lots, one lot that takes in existing buildings & existing dwelling, and a new lot (Lot 2) that is greater than 4 hectares.

6.19. The dominance of buildings is avoided through a prescribed building location, and viewshaft protections for neighbours.

6.20. Earthworks, both cutting and filling are likely to be relatively small - limited to creating a building platform and accessway. The effects of this will not create an adverse effect on landform.

6.21. Design controls on buildings (habitable and non-habitable) particularly colour will reduce their visual impact. These measures are regularly applied in the district and their effectiveness is evident. Avoiding highly visible buildings will maintain rural character and reduce prominence.

6.22. The proposal is consistent with the rural design guidelines (Appendix ii) in that the allotment sizes are rural in size. A future dwelling on Lot2 will not be prominent as it is tucked into/below an existing embankment that will reduce the perceived scale of any building.

6.23. Pleasantness and coherence as per the definition of amenity in the RMA will be maintained through the small scale of the proposal in the context of the wider environment and the nature of activity which is largely anticipated.

6.24. Design controls will maintain pleasantness for those within the viewing audience and users of Timaru Road Lower (there are no views from Weld Road Lower). The quality of the environment will also be maintained and enhanced through these measures.

6.25. Consultation with mana whenua is described in the Application.

6.26. The Archaeological site (ID42) on the property on the other side of the river will not be affected by the proposal as the landscape change on Lot 2 is over 450m away.

6.27. The closest waterbody is the Timaru Stream which will not be affected by the proposal. The stream is not within or adjoining the subdivision site.

7. MITIGATION

Purpose

7.1. The following mitigation measures aim to ensure the development can occur with acceptable effects and are consistent with assessment criteria under Rural Rule 78. These measures are informed by the site's character and viewing audience. These recommend measure are in addition to those in the Application (e.g., areas protecting views are shown on the Subdivision Scheme Plan, and a Proposed Building Platform on Lot 2).

Recommendations

Lot 1

a) To maintain rural character, no additional dwelling should be permitted on this lot while zoned rural, noting that the application includes an Area E (Subdivision Scheme Plan) that prevents additional dwellings outside this area.

Lot 2

a) To maintain rural character, only one dwelling should be permitted on this lot while zoned rural.

b) To maintain rural character and avoid a dominance of built form, no habitable buildings should be higher than 5.5m above existing ground level.

c) To maintain rural character all new buildings (habitable and non-habitable) roofs should be finished with materials that have a light reflectance value (LRV) of less than 20%.

d) To maintain rural character all new buildings (habitable and non-habitable) should be finished with cladding materials (walls, gable ends) that have a light reflectance value (LRV) of less than 40% excluding glazing and joinery.

e) To maintain rural character, any fencing of new boundaries should consist of either post and rail, or wire post and batten fencing only.

f) To maintain rural character no closed board fencing taller than 1.2m high should be located further than 10m from any building on this Lot. (Taller fencing located within 10m of dwellings is permitted to enable privacy of courtyards etc.)

g) To maintain night sky values, point sources of light should not be visible from outside the site. To this end all exterior lighting should all be 'hooded' so that viewers would see a glow rather than a bright light.

h) Consideration was given to screen planting to soften views from the west, but this assessment considers that such planting is unnecessary due to the very low nature of visual effects.

i) To maintain landforms, any cut or fill batters greater than 1.5m high should be laid back at an angle suitable for planting or grassing. This angle should be no steeper than 1:1.

8. CONCLUSION

8.1. With mitigation, the subdivision will not alter the area's rural character beyond a minor degree. Given that the proposal is discretionary, subdivision of this scale is anticipated in the ODP.

8.2. Rural character is avoided through an identified building platform and the low magnitude of landscape change enabled by the subdivision.

8.3. Effects on the visual amenity of properties within the viewing catchment are assessed as no greater than very low, (less than minor).

8.4. Visual effects on users of Timaru Road will be no greater than very low, and negligible from Weld Road.

8.5. With mitigation, the site and wider area's rural character values are maintained.

9. APPENDICES

Appendix i

Landscape & Visual Assessment Guidelines

Appendix ii

Definitions & Rural Subdivision Design Guidelines

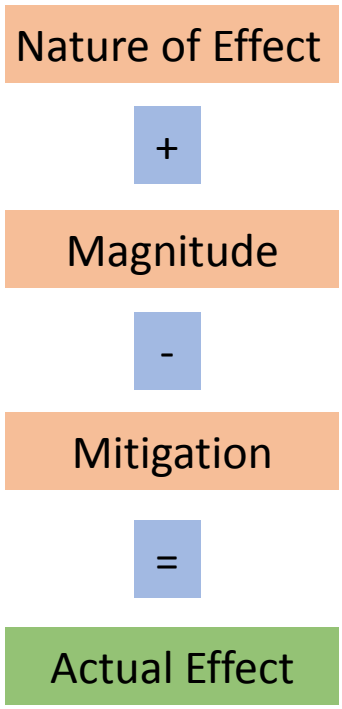
Appendix i

Landscape & Visual Assessment Guidelines

The methodology responds to the Resource Management Act 1991 (RMA as follows:

Assessment of effects on the physical landscape, Section 7 (c) the maintenance and enhancement amenity values and (f) maintenance and enhancement of the quality of the environment are referred to as landscape effect within the report, which take into account:

- Landform effects, e.g. Earthworks including cut and fill
- Landcover effects, e.g. Loss of vegetation
- Land use effects, e.g. Change form pastoral use to urban use.
- The 'fit' within the existing landscape character and patterns
- The ability of the landscape to absorb change
- Visual amenity in relation to the appearance of structures
- Effects on views from dwellings and private property
- The ability to mitigate effects and actual effects after mitigation has been established



The seven-point scale (over) is based on the *NZILA Landscape Assessment & Sustainable Management* Best Practice Note 10.1.

The effect of the specific change to the environment in relation to the subject site will be quantified by predicting the magnitude of positive or negative change in relation to the existing character of the area. Effects may be potential and actual, positive or adverse, temporary, permanent or cumulative. The rating is utilised to determine the need for and then the degree and extent of landscape mitigation measures. The Assessment does not attempt to predict the visual effects of seasonal changes throughout the year but describes the 'worst case' position in terms of the character types or views of receptors.

Rating	Indicative Examples
Negligible	The proposal will have no discernible change or have a neutral effect on the existing landscape character or viewer.
Very Low	The proposal may have slightly discernible or the distance of the viewer from the proposal is such that it is difficult to discern the proposal and consequently has little overall effect.
Low (Minor*)	The proposal may be discernible within the landscape but will not have a marked effect on the overall quality of the landscape or affect the viewer. The proposal will have a small effect or change.
Moderate	The proposal will form a visible and recognisable new element within the landscape and would be discernible and have a noticeable effect on the overall quality of the landscape and/or affect to the viewer.
High	The proposal will form a significant and new element within the landscape and will affect the overall landscape character and/or affect to the viewer. Existing views are materially changed.
Very High	The proposal will result in a visible and immediately apparent element within the landscape and will result in a permanent change to the overall landscape character and/or affect to the viewer. Primary views are restricted.
Extreme	The proposal will result in the loss of key attributes thereby creating a significant change in landscape character and the proposal becomes the overwhelmingly dominant feature and may obscure primary views.
Effects can be adverse or beneficial	
***Determination of Minor** A consent can be publicly notified if is the decision maker considers that the activity will have or is likely to have adverse effects that are more than minor. Where public notification is not required, limited notification must be given to those who are affected in a minor or more than minor way (but not less than minor). In relation to this assessment 'Low' would generally equate to '**minor**'.	

Appendix ii

Definitions

Key Definitions used in this report:

Landscape:
Embodies the relationships between people and places: It is an area's collective physical attributes, how they are perceived, and what they mean for people.

Landscape character:
Each landscape's distinctive combination of physical, associative, and perceptual attributes

Landscape attributes:
Tangible and intangible characteristics and qualities that contribute collectively to landscape character.

Landscape Value
The relative regard (quality, meaning, importance, merit, worth) with which a landscape is held.

Landscape Values
The reasons a landscape is valued, embodied in its valued attributes

Landscape Unit
A distinct part of a landscape based on aspects such as landform or land use.

Landscape character area
A group of contiguous landscapes sharing similar specific character. For example, the Taranaki Ring Plain

Landscape character type:
A category of landscapes – not necessarily contiguous – sharing similar generic characteristics. For example, 'rural character'

Natural features and landscapes
Features and landscapes that are characterised by natural elements (indigenous or exotic) and are relatively uncluttered by human structures such as buildings and roads.

Natural character
The specific combination of natural characteristics and qualities – including degree of naturalness – of places within the coastal environment, wetlands, lakes and rivers and their margins.

Outstanding natural features and landscapes
Natural features and natural landscapes that are of outstanding value because of their physical, perceptual and/or associative values in the context of their district or region.

Rural Subdivision & Development Design Guidelines 2012

Developed in 2012 by NPDC as a companion to the rural review and subsequent rule changes. These guidelines cover a range of factors that owners of rural land should consider when considering subdivision. These factors include design & layout, building location, landscape and vegetation, servicing and building appearance.

Rural Design Considerations and Key Elements as outlined within the NPDC Rural Design Guide (Simplified)	
Design and Layout:	• Site Survey • Working with the landscape • Allotment Placement • Boundary Alignment • Allotment Size • Neighbours • Sensitive Landscapes • Cultural features • Heritage Features • Natural Features
Building Location:	• Visual Effects • Open Character • Earthworks • Building Setback • Building Scale • Existing Vegetation • Eco-Efficiency
Landscaping and Vegetation:	• Biodiversity • Retain Existing Vegetation • Planting with Land contours • Screening and Privacy • Fencing and Signage • Landscape surrounds and boundaries
Servicing:	• Efficient Servicing • Access ways • Access way Design • Shared Entrances • Lo-Impact Design for rural infrastructure • Riparian Management • Efficient resource use • Connectivity
Building Appearance:	• Building Scale • Building consistency • Building colours • Building style • Sustainable building

Figure 1: Site Context

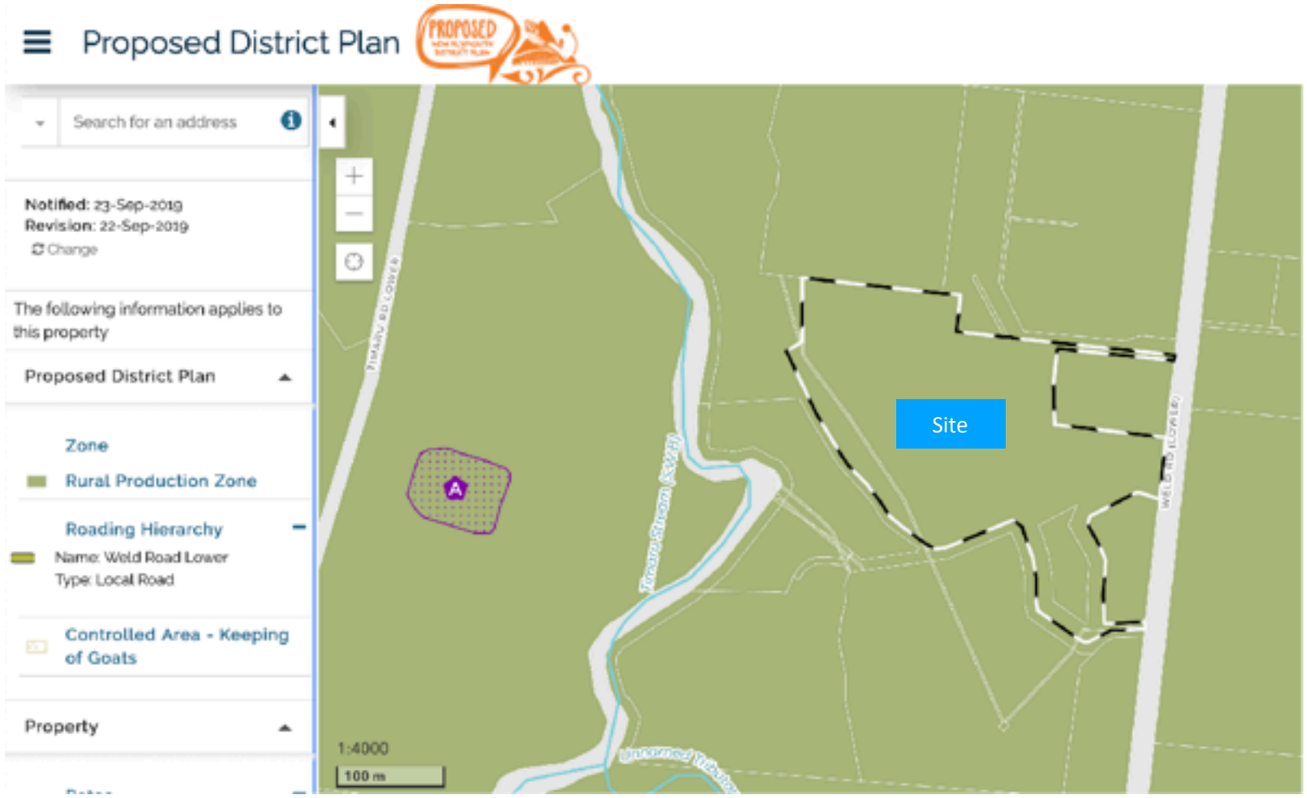


Figure 2: Proposed District Plan

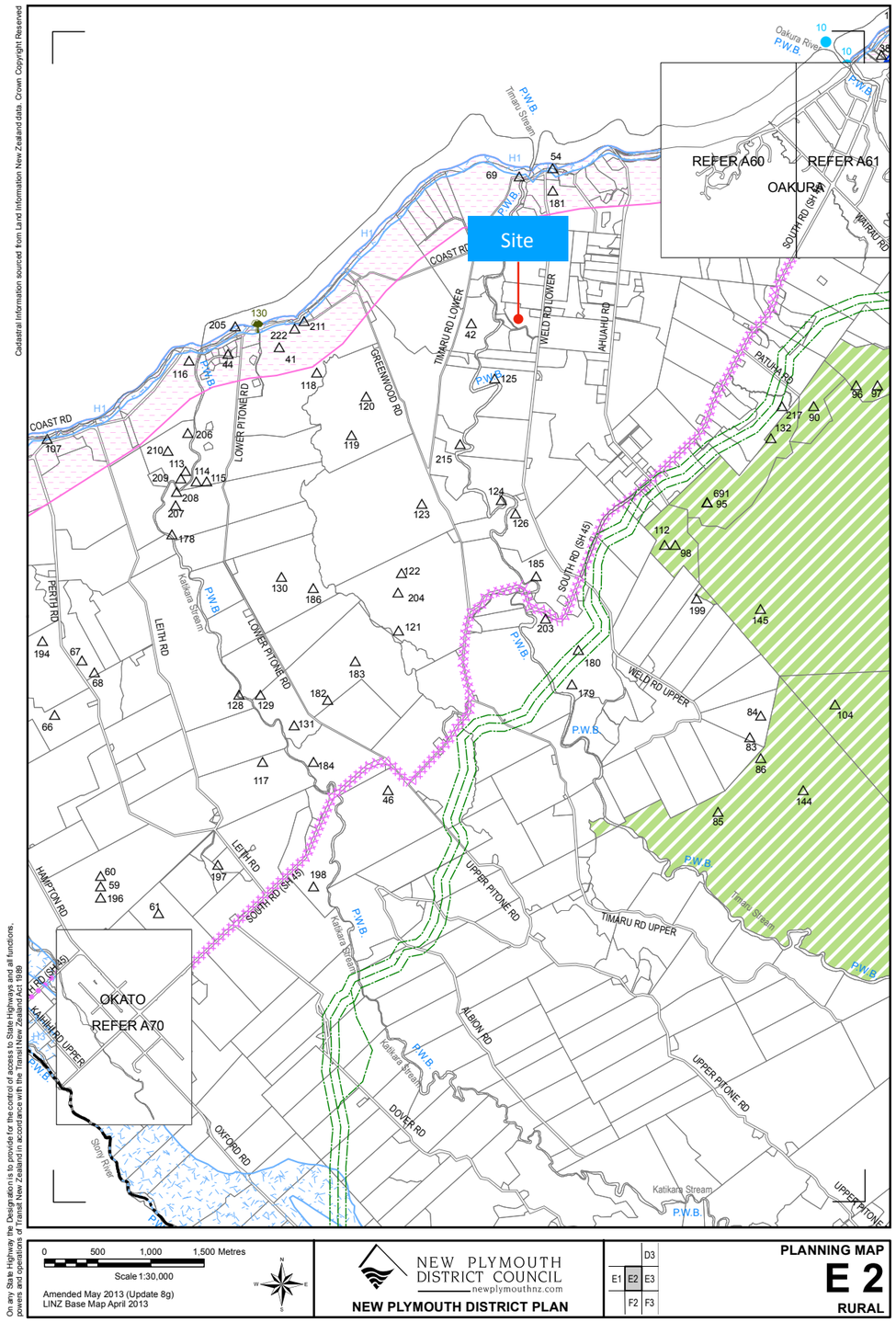


Figure 3: Operative District Plan

ID	Address	Type
A	255 Weld Road Lower	Neighbouring property
B	271 Weld Road Lower	Neighbouring property
C	235 Weld Road Lower	Neighbour over ROW
D	247 Weld Road Lower	Neighbour over ROW
E	247A Weld Road Lower	Neighbour over ROW
F	247C Weld Road Lower	Neighbour over ROW
G	247B Weld Road Lower	Neighbour over ROW
H	LOT 2 DP 486355	Neighbouring property
I	Lot 1 DP 432478	Neighbouring property
J	147 Weld Road Lower	Property over river
K	Timaru Road Lower	Public Road
L	Weld Road Lower	Public Road

Figure 4: Viewing Audience

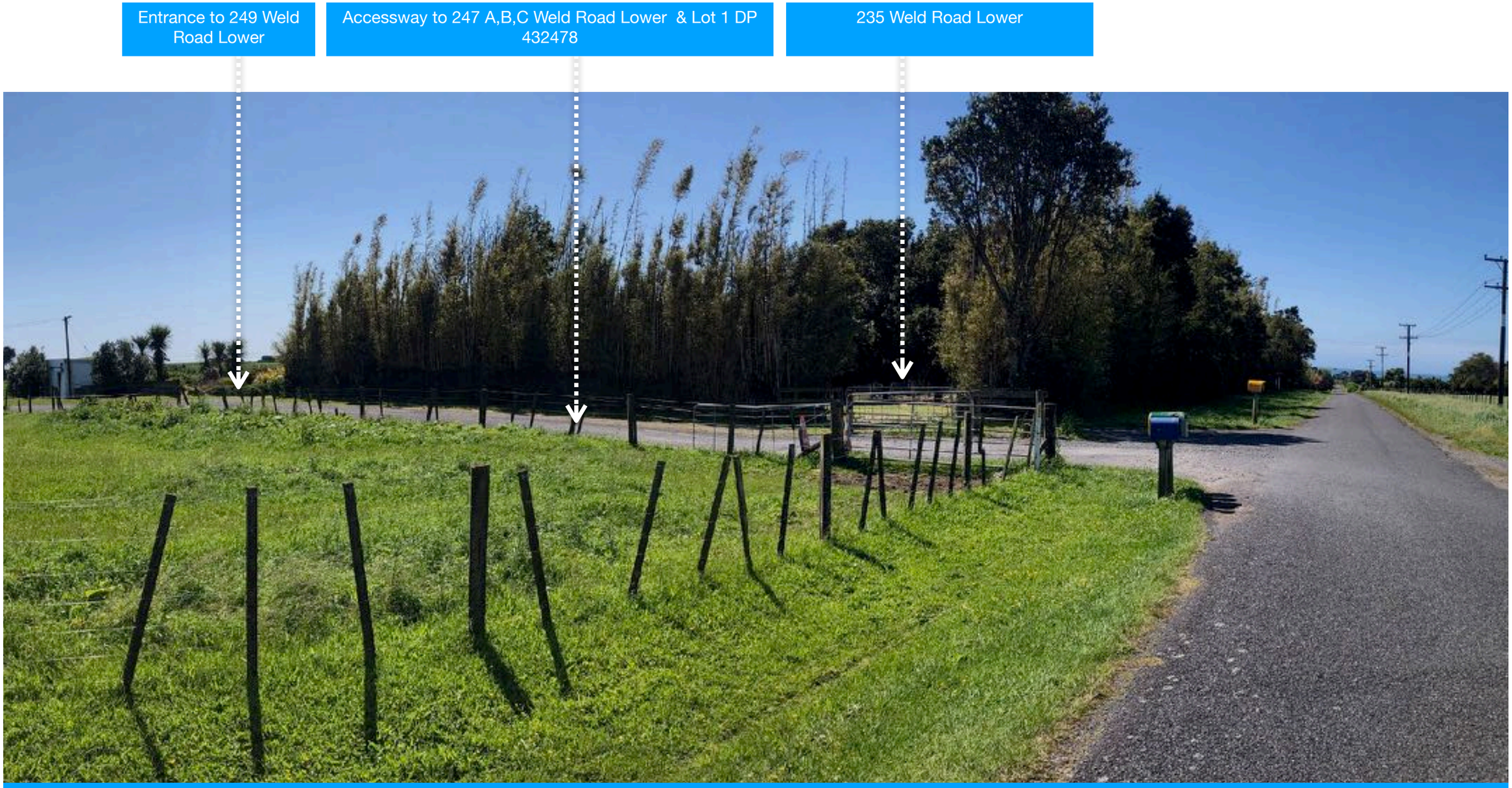


Figure 5: First view towards site from Weld Road Lower

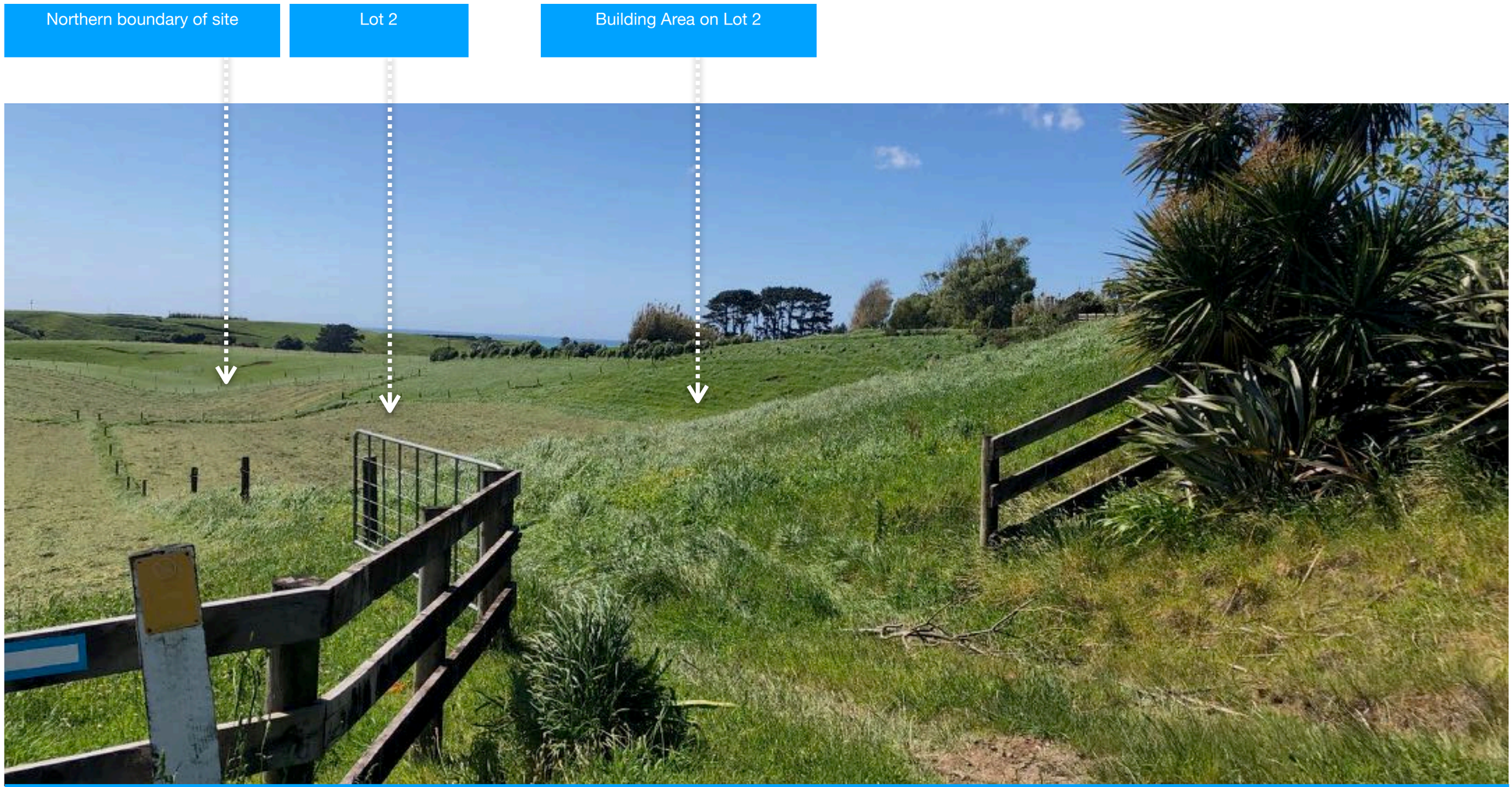


Figure 6: View into proposed Lot 2 from southern end of Lot

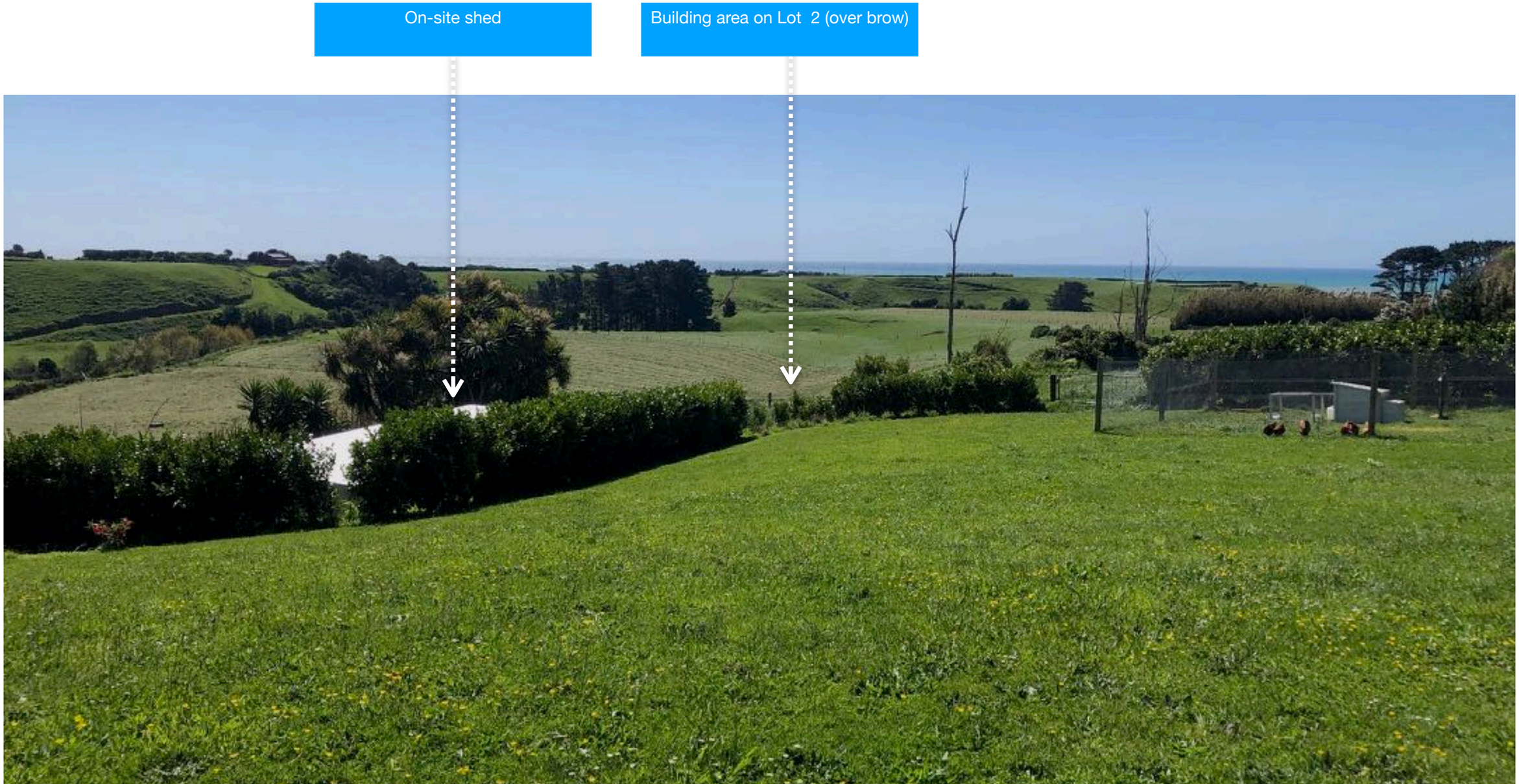


Figure 7: View north from dwelling on site

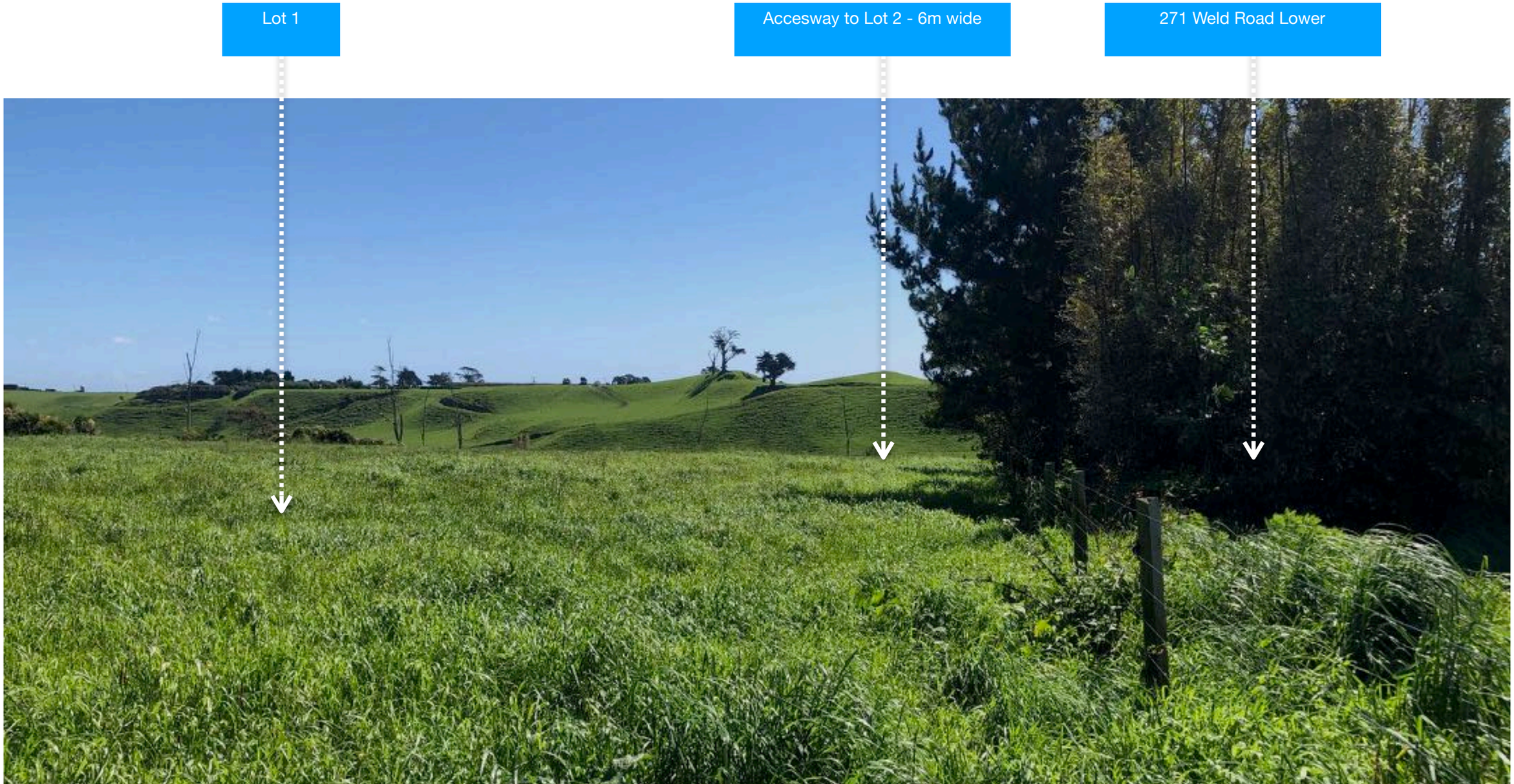


Figure 8: View into Lot site along proposed accessway to Lot 2

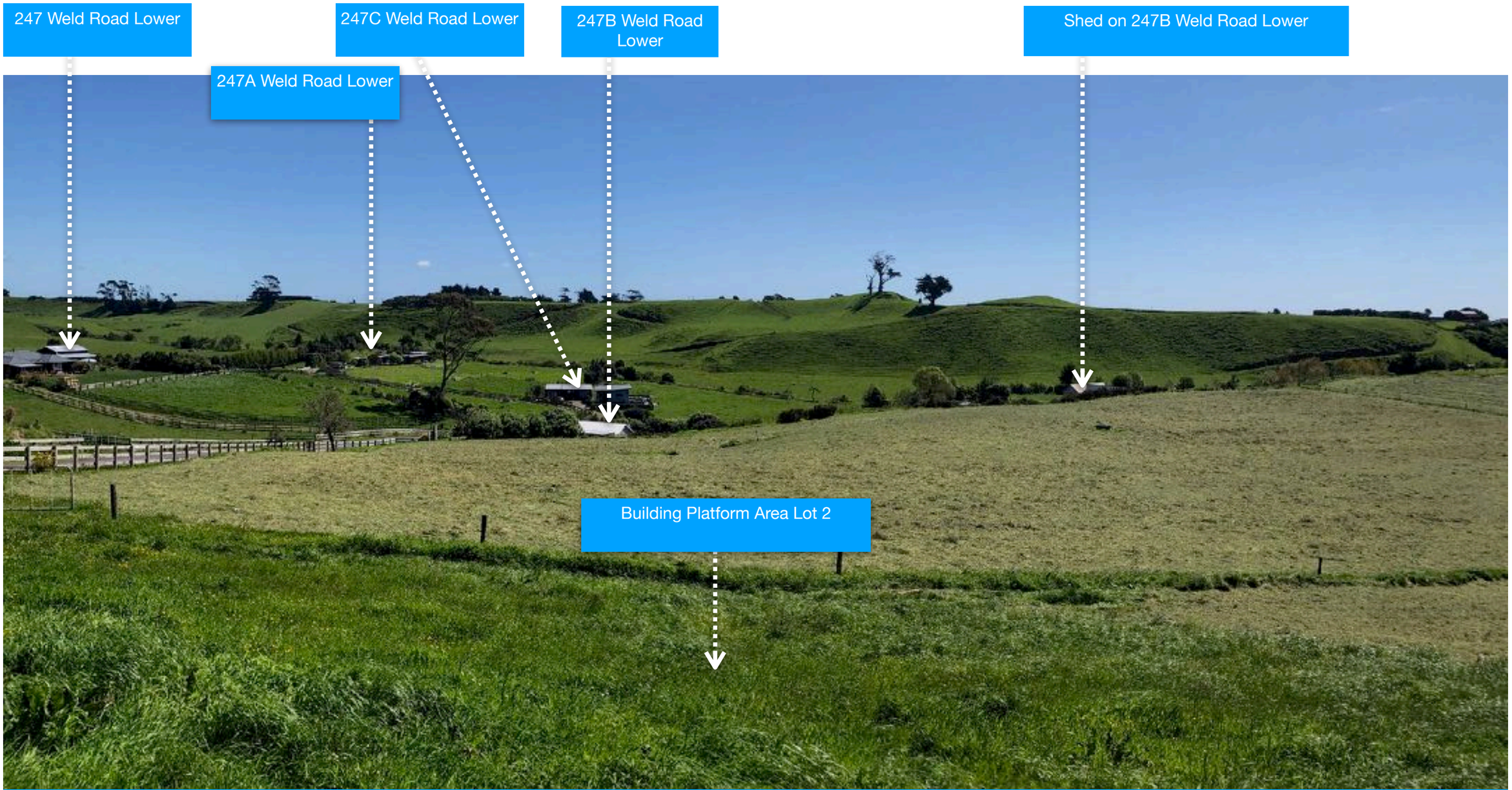


Figure 9: View of building area on Lot 2 looking south-west

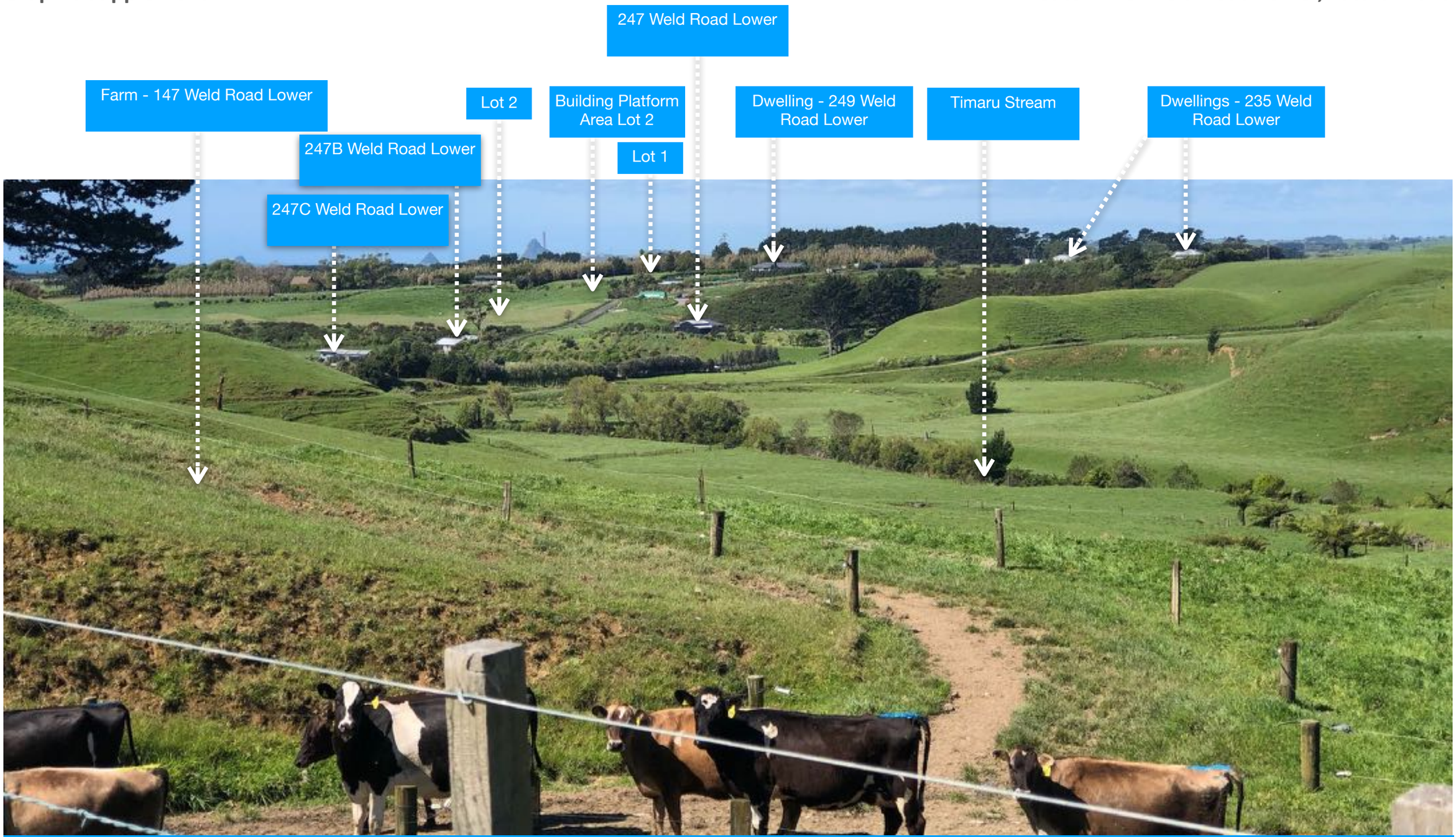
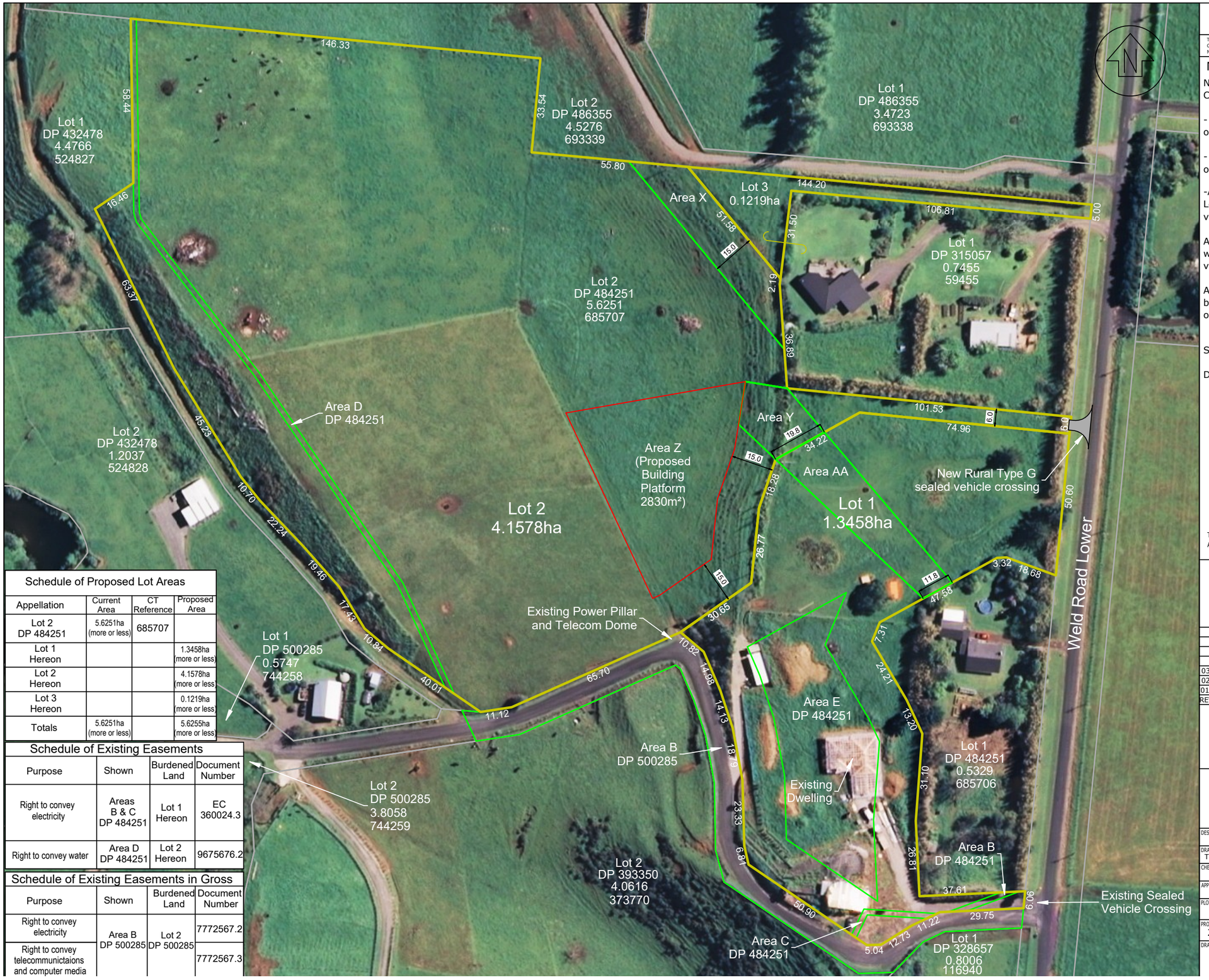


Figure 10: View of site from Timaru Road Lower

Graphic Supplement

Beaton 249 Weld Road Lower, Tataraimaka



Schedule of Proposed Lot Areas			
Appellation	Current Area	CT Reference	Proposed Area
Lot 2 DP 484251	5.6251ha (more or less)	685707	
Lot 1 Hereon			1.3458ha (more or less)
Lot 2 Hereon			4.1578ha (more or less)
Lot 3 Hereon			0.1219ha (more or less)
Totals	5.6251ha (more or less)		5.6255ha (more or less)

Schedule of Existing Easements			
Purpose	Shown	Burdened Land	Document Number
Right to convey electricity	Areas B & C DP 484251	Lot 1 Hereon	EC 360024.3
Right to convey water	Area D DP 484251	Lot 2 Hereon	9675676.2

Schedule of Existing Easements in Gross			
Purpose	Shown	Burdened Land	Document Number
Right to convey electricity	Area B DP 500285	Lot 2 DP 500285	7772567.2
Right to convey telecommunictaions and computer media			7772567.3

Notes:

Note: Lots 1 & 2 hereon are subject to Consent Notice 10058782.2

- No habitable dwellings shall be erected outside of Area E within Lot 1 hereon.

- No habitable dwellings shall be erected outside of Area Z within Lot 2 hereon.

-Area X - Proposed Land covenant with Lot 1 DP 315057 - maximum height of vegetation within Area X - 2m

Areas AA and Y - Proposed land covenant with Lot 1 DP 484251 - maximum height of vegetation within Areas AA and Y - 2m

Amalgamation Condition: That Lot 3 hereon be held together with Lot 1 DP 315057 and one registered title issued herewith.

Signed: .....

Date: .....

This Plan to be used for Resource Consent Purposes Only
Area and Dimensions are subject to Land Transfer Survey

TAYLOR PATRICK
SURVEYING PLANNING DESIGN
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m 021 543 693
stefan@taylorpatrick.co.nz

REV	AMENDMENT	BY	DATE
03	Added Areas Y and AA	SK	13/10/21
02	Add Lot 3 and Area X	TB	30/09/21
01	Move driveway for Lot 2	TB	23/09/21

Beaton
249 Weld Road Lower
Tataraimaka

Lots 1 to 3 being a proposed subdivision of Lot 2 DP 484251

DESIGNED:	DATE:	SIGNATURE:	PLOT DATE: 30/09/21
DRAWN: TB	DATE: 17/08/21	SIGNATURE:	CAD REF:
CHECKED:	DATE:	SIGNATURE:	CAD XREF:
APPROVED:	DATE:	SIGNATURE:	SURVEY BY: not surveyed
			SURVEY DATE:
			12D REF:

PLOT STATUS: For Neighbours Approval

PROJECT NUMBER: 21089 | SCALES: 1:1250 @ A3

DRAWING No: 100 | REV: 03

::\12d5\data\GRAEMEPC\21089-249 Weld Road_203\300 Working\21089 Scheme.12dmodel 21089 Scheme Wed Oct 13 17:07:30 2021

Figure 11: Subdivision Scheme Plans

Quickmap Title Details

Information last updated as at 13-Feb-2022

RECORD OF TITLE
DERIVED FROM LAND INFORMATION NEW ZEALAND
FREEHOLD

Identifier **685707**

Land Registration District **Taranaki**

Date Issued 19 June 2015

Prior References

373769

Type Fee Simple

Area 5.6251 hectares more or less

Legal Description Lot 2 Deposited Plan 484251

Registered Owners

Tracey Karen Beaton

Subject to a right to convey electricity over parts marked B and C on DP 484251 specified in Easement Certificate 360(3.5.1989 at 11:30 am

The easements specified in Easement Certificate 360024.3 are subject to Section 309(1)(a) Local Government Act 1974

Land Covenant in Easement Instrument 7784375.1 - 15.4.2008 at 9:00 am

Subject to a right to convey water over part marked D on DP 484251 created by Easement Instrument 9675676.2 - 24.3. at 1:58 pm

10058782.2 Consent Notice pursuant to Section 221 Resource Management Act 1991 - 19.6.2015 at 3:47 pm

The information provided on this report forms a guideline only. As a result, Custom Software Limited cannot and does n provide any warranties or assurances of any kind in relation to the accuracy of the information provided through this re the Site and Service. Custom Software Limited will not be liable for any claims in relation to the content of this report, t and this service.

Te Kaunihera-ā-Rohe o Ngāmotu
NEW PLYMOUTH DISTRICT COUNCIL
newplymouthnz.com

FORM 8A
Written approval to an activity subject to a resource consent application

Please read the information on the back of this page before giving your written approval in respect of a resource consent application.

1. Affected person's details

1a. I am the ☑ Property owner ○ Occupier

1b. Of the property at (street address): 271 WELD ROAD LOWER TATARAIMAKA RD4 NEW PLYMOUTH

1c. Full name: GREGORY MARK (First name(s)) SHEFFIELD (Surname)

1d. Electronic service address:

1e. Telephone: 027 371 5333 (Mobile) ____ (Landline)

1f. Postal address or alternative method of service under Section 352 of RMA 1991:

1g. I have the authority to sign on behalf of all other owner/occupiers of the property ☑ Yes ○ No

2. Resource consent application details

2a. Applicant's name: TRACEY & GRAEME (First name(s)) BEATON (Surname)

2b. Site address: 249 WELD RD LOWER, NEW PLYMOUTH

2c. Description of proposal: 2 Lot Rural subdivision

3. Documents and plans

I have read and/or seen:

○ The full resource consent application, including:

○ The full description of the activity and the assessment of environmental effects (AEE).

☑ Plan(s), signed by me and listed below. (If required, attach any additional plan information.)

Plan reference number	Plan title	Date
21089	21089 - 100 - 02	30/09/21

Please turn over

OFFICE USE ONLY

Date received		Property ID		Application #	
Time received		Land ID		Document #	
Received by					

Liardet Street, Private Bag 2025, New Plymouth 4342, New Zealand. Telephone 06-759 6060, Fax 06-759 6072, Email enquiries@npdc.govt.nz, Website www.newplymouthnz.com

4. Privacy statement

The Privacy Act 1993 applies to the personal information provided in this written approval. For the purposes of processing the resource consent application the Council may disclose this personal information to another party. If you want to have access to, or request correction of, this personal information, please contact the Council.

5. Affected person's declaration

By signing* this written approval, or by submitting this form electronically, I confirm that I understand the proposal and that the Council must decide that I am no longer an affected person and therefore must not have regard to any adverse effects on me.

I understand that I may withdraw my written approval by giving written notice to the Council before the hearing, if there is one or, if there is not, before the application is determined.

I confirm that the information contained in this written approval is true and correct, and agree to the disclosure of my personal information in respect of this written approval.

If signing on behalf of a trust or company, please provide additional written evidence that you have signing authority.

GREGORY MARK	SHEFFIELD.
First name(s)	Surname
Signature of person giving written approval (or person authorised to sign on behalf of the person giving written approval)	30/10/2021
	Date

*A signature is not required if you give your written approval by electronic means, however the plans do need to be signed.

6. Information for affected persons

1. Please ensure you fully understand the proposal before deciding whether to sign this form. You may need to ask for further information from the applicant.
2. There is no obligation to sign this form, and no reasons need to be given.
3. Conditional written approvals cannot be accepted.
4. If this form is not signed, the application may be notified and you may have the opportunity to submit on the application.
5. If the Council determines that the activity is a deemed permitted boundary activity under section 87BA of the Act, your written approval cannot be withdrawn.
6. It is acceptable for you to request that you be given some time to consider the application before deciding whether to provide your written consent or not. You may also obtain your own professional advice on the application e.g. from a lawyer, planner or surveyor before deciding whether or not to give your written approval.
7. 'An Everyday Guide to the RMA' on the Ministry for the Environment website at www.mfe.govt.nz contains useful information for affected persons.

   If you have any further questions regarding this process contact the duty planner at the Council on 06-759 6060.

Schedule of Proposed Lot Areas			
Appellation	Current Area	CT Reference	Proposed Area
Lot 2 DP 484251	5.6251ha (more or less)	685707	
Lot 1 Hereon			1.3458ha (more or less)
Lot 2 Hereon			4.1578ha (more or less)
Lot 3 Hereon			0.1219ha (more or less)
Totals	5.6251ha (more or less)		5.6255ha (more or less)

Schedule of Existing Easements			
Purpose	Shown	Burdened Land	Document Number
Right to convey electricity	Areas B & C DP 484251	Lot 1 Hereon	EC 360024.3
Right to convey water	Area D DP 484251	Lot 2 Hereon	9675676.2

Schedule of Existing Easements in Gross			
Purpose	Shown	Burdened Land	Document Number
Right to convey electricity	Area B DP 500285	Lot 2 DP 500285	7772567.2
Right to convey telecommunications and computer media			7772567.3

Notes:

Note: Lots 1 & 2 hereon are subject to Consent Notice 10058782.2

- No habitable dwellings shall be erected outside of Area E within Lot 1 hereon.

- No habitable dwellings shall be erected outside of Area Z within Lot 2 hereon.

-Area X - Proposed Land covenant with Lot 1 DP 315057 - maximum height of vegetation within Area X - 2m

Amalgamation Condition: That Lot 3 hereon be held together with Lot 1 DP 315057 and one registered title issued herewith.

Signed: .....

Date: 30/10/2021

This Plan to be used for Resource Consent Purposes Only
Area and Dimensions are subject to Land Transfer Survey

TAYLOR PATRICK
SURVEYING PLANNING
Huatoki Business Centre
17a Brougham Street
PO Box 4261
New Plymouth 4310
p 06 758 1021
m 021 543 805
stefan@taylorpatrick.co.nz

REV	AMENDMENT	BY	DATE
02	Add Lot 3 and Area X	TB	30/09/21
01	Move driveway for Lot 2	TB	23/09/21

Beaton
249 Weld Road Lower
Tataraimaka

Lots 1 to 3 being a proposed subdivision of Lot 2 DP 484251

DESIGNED:	DATE:	SIGNATURE:	PLOT DATE: 30/09/21
DRAWN: TB	DATE: 17/09/21	SIGNATURE:	CAD REF:
CHECKED:	DATE:	SIGNATURE:	CAD XREF:
APPROVED:	DATE:	SIGNATURE:	SURVEY BY: not surveyed
			SURVEY DATE:
			LID REF:

PLOT STATUS: For Neighbours Approval

PROJECT NUMBER: 21089 | SCALES: 1:1250 @ A3

DRAWING No: 100 | REV: 02

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Te Kaunihera-ā-Rohe o Ngāmotu
NEW PLYMOUTH DISTRICT COUNCIL
newplymouthnz.com

FORM 8A
Written approval to an activity subject to a resource consent application

Please read the information on the back of this page before giving your written approval in respect of a resource consent application.

1. Affected person's details

1a. I am the ☑ Property owner ○ Occupier

1b. Of the property at (street address): 247c Weld Road Lower New Plymouth

1c. Full name: Angela + Steven (First name(s)) Blair (Surname)

1d. Electronic service address:

1e. Telephone: 0276355531 (Mobile) 0274186031 (Landline)

1f. Postal address or alternative method of service under Section 352 of RMA 1991:

1g. I have the authority to sign on behalf of all other owner/occupiers of the property ☑ Yes ○ No

2. Resource consent application details

2a. Applicant's name: TRACEY & GRAEME (First name(s)) BEATON (Surname)

2b. Site address: 249 WELD RD, NEW PLYMOUTH

2c. Description of proposal: 2 LOT RURAL SUBDIVISION

3. Documents and plans

I have read and/or seen:

○ The full resource consent application, including:

○ The full description of the activity and the assessment of environmental effects (AEE).

☑ Plan(s), signed by me and listed below. (If required, attach any additional plan information.)

Plan reference number	Plan title	Date
21089	21089-100-00	17/08/21

Please turn over

OFFICE USE ONLY

Date received		Property ID		Application #	
Time received		Land ID		Document #	
Received by					

Liardet Street, Private Bag 2025, New Plymouth 4342, New Zealand. Telephone 06-759 6060, Fax 06-759 6072, Email enquiries@npdc.govt.nz, Website www.newplymouthnz.com

4. Privacy statement

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5. Affected person's declaration

By signing* this written approval, or by submitting this form electronically, I confirm that I understand the proposal and that the Council must decide that I am no longer an affected person and therefore must not have regard to any adverse effects on me.

I understand that I may withdraw my written approval by giving written notice to the Council before the hearing, if there is one or, if there is not, before the application is determined.

I confirm that the information contained in this written approval is true and correct, and agree to the disclosure of my personal information in respect of this written approval.

If signing on behalf of a trust or company, please provide additional written evidence that you have signing authority.

First name(s)	Surname
STEVEN + Angela	BLAIR

Signature of person giving written approval (or person authorised to sign on behalf of the person giving written approval)	Date
A Blair	28/10/2021

*A signature is not required if you give your written approval by electronic means, however the plans do need to be signed.

6. Information for affected persons

1. Please ensure you fully understand the proposal before deciding whether to sign this form. You may need to ask for further information from the applicant.
2. There is no obligation to sign this form, and no reasons need to be given.
3. Conditional written approvals cannot be accepted.
4. If this form is not signed, the application may be notified and you may have the opportunity to submit on the application.
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   If you have any further questions regarding this process contact the duty planner at the Council on 06-759 6060.

Schedule of Proposed Lot Areas			
Appellation	Current Area	CT Reference	Proposed Area
Lot 2 DP 484251	5.6251ha (more or less)	685707	
Lot 1 Hereon			1.3458ha (more or less)
Lot 2 Hereon			4.1578ha (more or less)
Lot 3 Hereon			0.1219ha (more or less)
Totals	5.6251ha (more or less)		5.6255ha (more or less)

Schedule of Existing Easements			
Purpose	Shown	Burdened Land	Document Number
Right to convey electricity	Areas B & C DP 484251	Lot 1 Hereon	EC 360024.3
Right to convey water	Area D DP 484251	Lot 2 Hereon	9675676.2

Schedule of Existing Easements in Gross			
Purpose	Shown	Burdened Land	Document Number
Right to convey electricity	Area B DP 500285	Lot 2 DP 500285	7772567.2
Right to convey telecommunicaions and computer media			7772567.3

Notes:

Note: Lots 1 & 2 hereon are subject to Consent Notice 10058782.2

- No habitable dwellings shall be erected outside of Area E within Lot 1 hereon.

- No habitable dwellings shall be erected outside of Area Z within Lot 2 hereon.

-Area X - Proposed Land covenant with Lot 1 DP 315057 - maximum height of vegetation within Area X - 2m

Areas AA and Y - Proposed land covenant with Lot 1 DP 484251 - maximum height of vegetation within Areas AA and Y - 2m

Amalgamation Condition: That Lot 3 hereon be held together with Lot 1 DP 315057 and one registered title issued herewith.

Signed: .....

Date: 28/10/2021

This Plan to be used for Resource Consent Purposes Only
Area and Dimensions are subject to Land Transfer Survey

TAYLOR PATRICK
SURVEYING
Hustad Business Centre
17a Brougham Street
PO Box 8254
New Plymouth 4310
p 06 758 1621
m 021 543 985
stefan@taylorpatrick.co.nz

REV	AMENDMENT	BY	DATE
03	Added Areas Y and AA	SK	13/10/21
02	Add Lot 3 and Area X	TB	30/09/21
01	Move driveway for Lot 2	TB	23/09/21

Beaton
249 Weld Road Lower
Tataraimaka

Lots 1 to 3 being a proposed subdivision of Lot 2 DP 484251

DESIGNED:	DATE:	SIGNATURE:	PLOT DATE: 30/09/21
DRAWN: TB	DATE: 27/09/21	SIGNATURE:	CAD REF:
CHECKED:	DATE:	SIGNATURE:	CAD SHEET: SURVEY BY: not surveyed
APPROVED:	DATE:	SIGNATURE:	SURVEY DATE:
			12D REF:

PLOT STATUS: For Neighbours Approval

PROJECT NUMBER: 21089 | SCALES: 1:1250 @ A3

DRAWING No: 100 | REV: 03

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Te Kaunihera-ā-Rohe o Ngāmotu
NEW PLYMOUTH DISTRICT COUNCIL
newplymouthnz.com

FORM 8A
Written approval to an activity subject to a resource consent application

Please read the information on the back of this page before giving your written approval in respect of a resource consent application.

1. Affected person's details

1a. I am the (X) Property owner ( ) Occupier

1b. Of the property at (street address): 247A WELD ROAD NEW PLYMOUTH

1c. Full name: ~~NICK KING~~ SIOBAN (First name(s)) KING Luttrell. (Surname)

1d. Electronic service address: nick.king@halliburton.com shuvvey@xtra.co.nz

1e. Telephone: 021283 9270 (Mobile) 06 7527295 (Landline)

1f. Postal address or alternative method of service under Section 352 of RMA 1991: —

1g. I have the authority to sign on behalf of all other owner/occupiers of the property ( ) Yes ( ) No

2. Resource consent application details

2a. Applicant's name: TRACEY & GRAEME (First name(s)) BEATON (Surname)

2b. Site address: 249 WELD RD, NEW PLYMOUTH

2c. Description of proposal: 2 LOT RURAL SUBDIVISION

3. Documents and plans

I have read and/or seen:

( ) The full resource consent application, including:

( ) The full description of the activity and the assessment of environmental effects (AEE).

(✓) Plan(s), signed by me and listed below. (If required, attach any additional plan information.)

Plan reference number	Plan title	Date
21089	21089-100-00	17/08/2021

Please turn over

OFFICE USE ONLY

Date received | Property ID | Application #
Time received | Land ID | Document #
Received by

Liardet Street, Private Bag 2025, New Plymouth 4342, New Zealand. Telephone 06-759 6060, Fax 06-759 6072, Email enquiries@npdc.govt.nz, Website www.newplymouthnz.com

NAK

4. Privacy statement

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5. Affected person's declaration

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I confirm that the information contained in this written approval is true and correct, and agree to the disclosure of my personal information in respect of this written approval.

If signing on behalf of a trust or company, please provide additional written evidence that you have signing authority.

First name(s)	Surname
SIOBAN ~~LEITH~~ NICHOLAS PAUL ~~KING~~	Wilfred KING
Signature of person giving written approval (or person authorised to sign on behalf of the person giving written approval)	Date
	27th Sept 2021

*A signature is not required if you give your written approval by electronic means, however the plans do need to be signed.

6. Information for affected persons

1. Please ensure you fully understand the proposal before deciding whether to sign this form. You may need to ask for further information from the applicant.
2. There is no obligation to sign this form, and no reasons need to be given.
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Schedule of Proposed Lot Areas			
Appellation	Current Area	CT Reference	Proposed Area
Lot 2 DP 484251	5.6251ha (more or less)	685707	
Lot 1 Hereon			1.3458ha (more or less)
Lot 2 Hereon			4.1578ha (more or less)
Lot 3 Hereon			0.1219ha (more or less)
Totals	5.6251ha (more or less)		5.6255ha (more or less)

Schedule of Existing Easements			
Purpose	Shown	Burdened Land	Document Number
Right to convey electricity	Areas B & C DP 484251	Lot 1 Hereon	EC 360024.3
Right to convey water	Area D DP 484251	Lot 2 Hereon	9675676.2

Schedule of Existing Easements in Gross			
Purpose	Shown	Burdened Land	Document Number
Right to convey electricity	Area B DP 500285	Lot 2 DP 500285	7772567.2
Right to convey telecommunicaions and computer media			7772567.3

Notes:

Note: Lots 1 & 2 hereon are subject to Consent Notice 10058782.2

- No habitable dwellings shall be erected outside of Area E within Lot 1 hereon.

- No habitable dwellings shall be erected outside of Area Z within Lot 2 hereon.

-Area X - Proposed Land covenant with Lot 1 DP 315057 - maximum height of vegetation within Area X - 2m

Amalgamation Condition: That Lot 3 hereon be held together with Lot 1 DP 315057 and one registered title issued herewith.

Signed: .....

Date: 25 Oct 2021

This Plan to be used for Resource Consent Purposes Only
Area and Dimensions are subject to Land Transfer Survey

TAYLOR PATRICK
SURVEYING
Huatoki Business Centre
17a Brougham Street
PO Box 8254
New Plymouth 4310
p 06 758 1021
m 021 543 805
stefan@taylorpatrick.co.nz

REV	AMENDMENT	BY	DATE
02	Add Lot 3 and Area X	TB	30/09/21
01	Move driveway for Lot 2	TB	23/09/21

Beaton
249 Weld Road Lower
Tataraimaka

Lots 1 to 3 being a proposed subdivision of Lot 2 DP 484251

DESIGNED:	DATE:	SIGNATURE:	PLOT DATE: 30/09/21
DRAWN: TB	DATE: 17/09/21	SIGNATURE:	C4D REF:
CHECKED:	DATE:	SIGNATURE:	C4D XREF:
APPROVED:	DATE:	SIGNATURE:	SURVEY BY: not surveyed
			SURVEY DATE:
			12D REF:

PLOT STATUS: For Neighbours Approval

PROJECT NUMBER: 21089 | SCALES: 1:1250 @ A3

DRAWING No: 100 | REV: 02

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Te Kaunihera-ā-Rohe o Ngāmotu
NEW PLYMOUTH DISTRICT COUNCIL
newplymouthnz.com

FORM 8A
Written approval to an activity subject to a resource consent application

Please read the information on the back of this page before giving your written approval in respect of a resource consent application.

1. Affected person's details

1a. I am the ☑ Property owner ○ Occupier

1b. Of the property at (street address): 2473 WELD ROAD RD4

1c. Full name: HACKLING FAMILY TRUST (First name(s)) HACKLING (Surname)

1d. Electronic service address:

1e. Telephone: 027 752 7965 (Mobile) ____ (Landline)

1f. Postal address or alternative method of service under Section 352 of RMA 1991:

1g. I have the authority to sign on behalf of all other owner/occupiers of the property ☑ Yes ○ No

2. Resource consent application details

2a. Applicant's name: TRACEY & GRAEME (First name(s)) BEATON (Surname)

2b. Site address: 249 WELD RD, NEW PLYMOUTH

2c. Description of proposal:

2 LOT RURAL SUBDIVISION

3. Documents and plans

I have read and/or seen:

○ The full resource consent application, including:

○ The full description of the activity and the assessment of environmental effects (AEE).

☑ Plan(s), signed by me and listed below. (If required, attach any additional plan information.)

Plan reference number	Plan title	Date
21089	21089 - 100 - ~~00~~ 02	17/08/2021

Please turn over

OFFICE USE ONLY

Date received		Property ID		Application #	
Time received		Land ID		Document #	
Received by					

Liardet Street, Private Bag 2025, New Plymouth 4342, New Zealand. Telephone 06-759 6060, Fax 06-759 6072, Email enquiries@npdc.govt.nz, Website www.newplymouthnz.com

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I confirm that the information contained in this written approval is true and correct, and agree to the disclosure of my personal information in respect of this written approval.

If signing on behalf of a trust or company, please provide additional written evidence that you have signing authority.

First name(s)	Surname
NICHOLAS GRAHAM & ABIGAIL JANE	HACKLING

Signature of person giving written approval (or person authorised to sign on behalf of the person giving written approval)	Date
	5-10-21

*A signature is not required if you give your written approval by electronic means, however the plans do need to be signed.

6. Information for affected persons

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Lot 1 Hereon			1.3458ha (more or less)
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Lot 3 Hereon			0.1219ha (more or less)
Totals	5.6251ha (more or less)		5.6255ha (more or less)

Schedule of Existing Easements			
Purpose	Shown	Burdened Land	Document Number
Right to convey electricity	Areas B & C DP 484251	Lot 1 Hereon	EC 360024.3
Right to convey water	Area D DP 484251	Lot 2 Hereon	9675676.2

Schedule of Existing Easements in Gross			
Purpose	Shown	Burdened Land	Document Number
Right to convey electricity	Area B DP 500285	Lot 2 DP 500285	7772567.2
Right to convey telecommunications and computer media			7772567.3

Notes:

Note: Lots 1 & 2 hereon are subject to Consent Notice 10058782.2

- No habitable dwellings shall be erected outside of Area E within Lot 1 hereon.

- No habitable dwellings shall be erected outside of Area Z within Lot 2 hereon.

-Area X - Proposed Land covenant with Lot 1 DP 315057 - maximum height of vegetation within Area X - 2m

Amalgamation Condition: That Lot 3 hereon be held together with Lot 1 DP 315057 and one registered title issued herewith.

Signed: .....

Date: 5/10/21

This Plan to be used for Resource Consent Purposes Only
Area and Dimensions are subject to Land Transfer Survey

TAYLOR PATRICK
SURVEYING PLANNING ENGINEERING
Huatoki Business Centre
17a Brougham Street
PO Box 4254
New Plymouth 4310
p 06 758 1021
m 021 343 885
stefan@taylorpatrick.co.nz

REV	AMENDMENT	BY	DATE
02	Add Lot 3 and Area X	TB	30/09/21
01	Move driveway for Lot 2	TB	23/09/21

Beaton
249 Weld Road Lower
Tataraimaka

Lots 1 to 3 being a proposed subdivision of Lot 2 DP 484251

DESIGNED:	DATE:	SIGNATURE:	PLOT DATE: 30/09/21
DRAWN: TB	DATE: 17/09/21	SIGNATURE:	CAD REF:
CHECKED:	DATE:	SIGNATURE:	CAD XREF:
APPROVED:	DATE:	SIGNATURE:	SURVEY BY: not surveyed
			SURVEY DATE:
			120 REF:

PLOT STATUS: For Neighbours Approval

PROJECT NUMBER: 21089 | SCALES: 1:1250 @ A3

DRAWING No: 100 | REV: 02

c:\12d\sdata\GISAENEPC\21089-249 Weld Road_2021\100 Working\121089 Scheme 12dmodel 21089 Scheme Thu Sep 30 10:51:53 2021

Te Kaunihera-ā-Rohe o Ngāmotu
NEW PLYMOUTH DISTRICT COUNCIL
newplymouthnz.com

FORM 8A
Written approval to an activity subject to a resource consent application

Please read the information on the back of this page before giving your written approval in respect of a resource consent application.

1. Affected person's details

1a. I am the ☑ Property owner ☐ Occupier

1b. Of the property at (street address): 283 Lower Weld Road, New Plymouth

1c. Full name: Lisa Robert S (First name(s)) Vale Bateman (Surname)

1d. Electronic service address:

1e. Telephone: Mobile: Landline:

1f. Postal address or alternative method of service under Section 352 of RMA 1991:

1g. I have the authority to sign on behalf of all other owner/occupiers of the property ☑ Yes ☐ No

2. Resource consent application details

2a. Applicant's name: TRACEY & GRAEME (First name(s)) BEATON (Surname)

2b. Site address: 249 WELD RD, NEW PLYMOUTH

2c. Description of proposal:

2 LOT RURAL SUBDIVISION

3. Documents and plans

I have read and/or seen:

☐ The full resource consent application, including:

☐ The full description of the activity and the assessment of environmental effects (AEE).

☑ Plan(s), signed by me and listed below. (If required, attach any additional plan information.)

Plan reference number	Plan title	Date
21089	21089-100-00	17/08/2021

Please turn over

OFFICE USE ONLY

Date received		Property ID		Application #	
Time received		Land ID		Document #	
Received by					

Liardet Street, Private Bag 2025, New Plymouth 4342, New Zealand. Telephone 06-759 6060, Fax 06-759 6072, Email enquiries@npdc.govt.nz, Website www.newplymouthnz.com

4. Privacy statement

The Privacy Act 1993 applies to the personal information provided in this written approval. For the purposes of processing the resource consent application the Council may disclose this personal information to another party. If you want to have access to, or request correction of, this personal information, please contact the Council.

5. Affected person's declaration

By signing* this written approval, or by submitting this form electronically, I confirm that I understand the proposal and that the Council must decide that I am no longer an affected person and therefore must not have regard to any adverse effects on me.

I understand that I may withdraw my written approval by giving written notice to the Council before the hearing, if there is one or, if there is not, before the application is determined.

I confirm that the information contained in this written approval is true and correct, and agree to the disclosure of my personal information in respect of this written approval.

If signing on behalf of a trust or company, please provide additional written evidence that you have signing authority.

First name(s)	Surname
Lisa Roberts	Vale Bateman

Signature of person giving written approval (or person authorised to sign on behalf of the person giving written approval)	Date
	1/10/21 8/10/21

*A signature is not required if you give your written approval by electronic means, however the plans do need to be signed.

6. Information for affected persons

1. Please ensure you fully understand the proposal before deciding whether to sign this form. You may need to ask for further information from the applicant.
2. There is no obligation to sign this form, and no reasons need to be given.
3. Conditional written approvals cannot be accepted.
4. If this form is not signed, the application may be notified and you may have the opportunity to submit on the application.
5. If the Council determines that the activity is a deemed permitted boundary activity under section 87BA of the Act, your written approval cannot be withdrawn.
6. It is acceptable for you to request that you be given some time to consider the application before deciding whether to provide your written consent or not. You may also obtain your own professional advice on the application e.g. from a lawyer, planner or surveyor before deciding whether or not to give your written approval.
7. 'An Everyday Guide to the RMA' on the Ministry for the Environment website at www.mfe.govt.nz contains useful information for affected persons.

   If you have any further questions regarding this process contact the duty planner at the Council on 06-759 6060.

Schedule of Proposed Lot Areas			
Appellation	Current Area	CT Reference	Proposed Area
Lot 2 DP 484251	5.6251ha (more or less)	685707	
Lot 1 Hereon			1.3458ha (more or less)
Lot 2 Hereon			4.1578ha (more or less)
Lot 3 Hereon			0.1219ha (more or less)
Totals	5.6251ha (more or less)		5.6255ha (more or less)

Schedule of Existing Easements			
Purpose	Shown	Burdened Land	Document Number
Right to convey electricity	Areas B & C DP 484251	Lot 1 Hereon	EC 360024.3
Right to convey water	Area D DP 484251	Lot 2 Hereon	9675676.2

...ule of Existing Easements in Gross			
	Shown	Burdened Land	Document Number
		Lot 2	7772567.2
		...00285	7772567.3

Notes:

Note: Lots 1 & 2 hereon are subject to Consent Notice 10058782.2

- No habitable dwellings shall be erected outside of Area E within Lot 1 hereon.

- No habitable dwellings shall be erected outside of Area Z within Lot 2 hereon.

-Area X - Proposed Land covenant with Lot 1 DP 315057 - maximum height of vegetation within Area X - 2m

Amalgamation Condition: That Lot 3 hereon be held together with Lot 1 DP 315057 and one registered title issued herewith.

Signed: .....

Date: 5/10/21

8/10/21

This Plan to be used for Resource Consent Purposes Only
Area and Dimensions are subject to Land Transfer Survey

TAYLOR PATRICK
SURVEYING
Huatoki Business Centre
17a Broughton Street
PO Box 4254
New Plymouth 4310
p 06 758 1021
m 021 543 885
stefan@taylorpatrick.co.nz

REV	AMENDMENT	BY	DATE
02	Add Lot 3 and Area X	TB	30/09/21
01	Move driveway for Lot 2	TB	23/09/21

Beaton
249 Weld Road Lower
Tataraimaka

Lots 1 to 3 being a proposed subdivision of Lot 2 DP 484251

DESIGNED:	DATE:	SIGNATURE:	PLOT DATE: 30/09/21
DRAWN: TB	DATE: 17/04/21	SIGNATURE:	CAD REF:
CHECKED:	DATE:	SIGNATURE:	CAD XREF:
APPROVED:	DATE:	SIGNATURE:	SURVEY BY: not surveyed
			SURVEY DATE:
			12D REF:

PLOT STATUS: For Neighbours Approval

PROJECT NUMBER: 21089 | SCALE: 1:1250 @ A3

DRAWING No: 100 | REV: 02

c:\12d\s\data\GRAEMEPC\21089-249 Weld Road_203\300 Working\21089 Scheme_12dmodel 21089 Scheme Thu Sep 30 10:51:53 2021

Te Kaunihera-ā-Rohe o Ngāmotu
NEW PLYMOUTH DISTRICT COUNCIL
newplymouthnz.com

FORM 8A
Written approval to an activity subject to a resource consent application

Please read the information on the back of this page before giving your written approval in respect of a resource consent application.

1. Affected person's details

1a. I am the ☑ Property owner ☐ Occupier

1b. Of the property at (street address): 247 WELD Road LOWER

1c. Full name: CHRISTOPHER JAMES (First name(s)) WAUGH (Surname)

1d. Electronic service address:

1e. Telephone: 027 209 2087 (Mobile) (Landline)

1f. Postal address or alternative method of service under Section 352 of RMA 1991:

1g. I have the authority to sign on behalf of all other owner/occupiers of the property ☑ Yes ☐ No

2. Resource consent application details

2a. Applicant's name: TRACEY & GRAEME (First name(s)) BEATON (Surname)

2b. Site address: 249 WELD RD, NEW PLYMOUTH

2c. Description of proposal:

2 LOT RURAL SUBDIVISION

3. Documents and plans

I have read and/or seen:

☐ The full resource consent application, including:

☐ The full description of the activity and the assessment of environmental effects (AEE).

☑ Plan(s), signed by me and listed below. (If required, attach any additional plan information.)

Plan reference number	Plan title	Date
21089	21089-100-00	17/08/2021

Please turn over

OFFICE USE ONLY

Date received		Property ID		Application #	
Time received		Land ID		Document #	
Received by					

Liardet Street, Private Bag 2025, New Plymouth 4342, New Zealand. Telephone 06-759 6060, Fax 06-759 6072, Email enquiries@npdc.govt.nz, Website www.newplymouthnz.com

4. Privacy statement

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5. Affected person's declaration

By signing* this written approval, or by submitting this form electronically, I confirm that I understand the proposal and that the Council must decide that I am no longer an affected person and therefore must not have regard to any adverse effects on me.

I understand that I may withdraw my written approval by giving written notice to the Council before the hearing, if there is one or, if there is not, before the application is determined.

I confirm that the information contained in this written approval is true and correct, and agree to the disclosure of my personal information in respect of this written approval.

If signing on behalf of a trust or company, please provide additional written evidence that you have signing authority.

First name(s)	Surname
CHRISTOPHER JAMES	WAUGH

Signature of person giving written approval (or person authorised to sign on behalf of the person giving written approval)	Date
	18/10/21

*A signature is not required if you give your written approval by electronic means, however the plans do need to be signed.

6. Information for affected persons

1. Please ensure you fully understand the proposal before deciding whether to sign this form. You may need to ask for further information from the applicant.
2. There is no obligation to sign this form, and no reasons need to be given.
3. Conditional written approvals cannot be accepted.
4. If this form is not signed, the application may be notified and you may have the opportunity to submit on the application.
5. If the Council determines that the activity is a deemed permitted boundary activity under section 87BA of the Act, your written approval cannot be withdrawn.
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7. 'An Everyday Guide to the RMA' on the Ministry for the Environment website at www.mfe.govt.nz contains useful information for affected persons.

   If you have any further questions regarding this process contact the duty planner at the Council on 06-759 6060.

Schedule of Proposed Lot Areas			
Appellation	Current Area	CT Reference	Proposed Area
Lot 2 DP 484251	5.6251ha (more or less)	685707	
Lot 1 Hereon			1.3458ha (more or less)
Lot 2 Hereon			4.1578ha (more or less)
Lot 3 Hereon			0.1219ha (more or less)
Totals	5.6251ha (more or less)		5.6255ha (more or less)

Schedule of Existing Easements			
Purpose	Shown	Burdened Land	Document Number
Right to convey electricity	Areas B & C DP 484251	Lot 1 Hereon	EC 360024.3
Right to convey water	Area D DP 484251	Lot 2 Hereon	9675676.2

Schedule of Existing Easements in Gross			
Purpose	Shown	Burdened Land	Document Number
Right to convey electricity	Area B DP 500285	Lot 2 DP 500285	7772567.2
Right to convey telecommunicaions and computer media			7772567.3

Notes:

Note: Lots 1 & 2 hereon are subject to Consent Notice 10058782.2

- No habitable dwellings shall be erected outside of Area E within Lot 1 hereon.

- No habitable dwellings shall be erected outside of Area Z within Lot 2 hereon.

-Area X - Proposed Land covenant with Lot 1 DP 315057 - maximum height of vegetation within Area X - 2m

Amalgamation Condition: That Lot 3 hereon be held together with Lot 1 DP 315057 and one registered title issued herewith.

Signed: .....

Date: 18/10/21

This Plan to be used for Resource Consent Purposes Only
Area and Dimensions are subject to Land Transfer Survey

TAYLOR PATRICK
SURVEYING PLANNING ENGINEERING
Hukaki Business Centre
17a Brougham Street
PO Box 4254
New Plymouth 4310
p 06 758 1021
m 021 543 893
stefan@taylorpatrick.co.nz

REV	AMENDMENT	BY	DATE
02	Add Lot 3 and Area X	TB	30/09/21
01	Move driveway for Lot 2	TB	23/09/21

Beaton
249 Weld Road Lower
Tataraimaka

Lots 1 to 3 being a proposed subdivision of Lot 2 DP 484251

DESIGNED:	DATE:	SIGNATURE:	PLOT DATE: 30/09/21
DRAWN: TB	DATE: 17/09/21	SIGNATURE:	C4D REF:
CHECKED:	DATE:	SIGNATURE:	C4D XREF:
APPROVED:	DATE:	SIGNATURE:	SURVEY BY: not surveyed
			SURVEY DATE:
			TZD REF:

PLOT STATUS: For Neighbours Approval

PROJECT NUMBER: 21089 | SCALES: 1:1250 @ A3

DRAWING No: 100 | REV: 02

c:\12d5\data\GRABEPC\21089-249 Weld Road_203\300 Working\21089 Scheme_12dmodel 21089 Scheme Thu Sep 30 10:51:53 2021

Te Kaunihera-ā-Rohe o Ngāmotu
NEW PLYMOUTH DISTRICT COUNCIL
newplymouthnz.com

FORM 8A
Written approval to an activity subject to a resource consent application

Please read the information on the back of this page before giving your written approval in respect of a resource consent application.

1. Affected person's details

1a. I am the ☑ Property owner ○ Occupier

1b. Of the property at (street address): 255 Weld Rd, Lower, RD4 New Plymouth 4374

1c. Full name: Beth (First name(s)) Bentall (Surname)

1d. Electronic service address: b.bentall@yahoo.co.nz

1e. Telephone: 021072 4344 (Mobile) ____ (Landline)

1f. Postal address or alternative method of service under Section 352 of RMA 1991: ____

1g. I have the authority to sign on behalf of all other owner/occupiers of the property ○ Yes ○ No

2. Resource consent application details

2a. Applicant's name: TRACEY & GRAEME (First name(s)) BEATON (Surname)

2b. Site address: 249 WELD RD, NEW PLYMOUTH

2c. Description of proposal:

2 LOT RURAL SUBDIVISION

3. Documents and plans

I have read and/or seen:

○ The full resource consent application, including:

○ The full description of the activity and the assessment of environmental effects (AEE).

☑ Plan(s), signed by me and listed below. (If required, attach any additional plan information.)

Plan reference number	Plan title	Date
~~21089~~	~~21089-100-00~~	~~19/08/2021~~
21089	21089-100-03	20/10/2021

Please turn over

OFFICE USE ONLY

Date received		Property ID		Application #	
Time received		Land ID		Document #	
Received by					

Liardet Street, Private Bag 2025, New Plymouth 4342, New Zealand. Telephone 06-759 6060, Fax 06-759 6072, Email enquiries@npdc.govt.nz, Website www.newplymouthnz.com

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I confirm that the information contained in this written approval is true and correct, and agree to the disclosure of my personal information in respect of this written approval.

If signing on behalf of a trust or company, please provide additional written evidence that you have signing authority.

First name(s)	Surname
Beth	Bentall

Signature of person giving written approval (or person authorised to sign on behalf of the person giving written approval)	Date
B Bentall	20/10/2021

*A signature is not required if you give your written approval by electronic means, however the plans do need to be signed.

6. Information for affected persons

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Purpose	Shown	Burdened Land	Document Number
Right to convey electricity	Areas B & C DP 484251	Lot 1 Hereon	EC 360024.3
Right to convey water	Area D DP 484251	Lot 2 Hereon	9675676.2

Schedule of Existing Easements in Gross			
Purpose	Shown	Burdened Land	Document Number
Right to convey electricity	Area B DP 500285	Lot 2 DP 500285	7772567.2
Right to convey telecommunications and computer media			7772567.3

Notes:

Note: Lots 1 & 2 hereon are subject to Consent Notice 10058782.2

- No habitable dwellings shall be erected outside of Area E within Lot 1 hereon.

- No habitable dwellings shall be erected outside of Area Z within Lot 2 hereon.

-Area X - Proposed Land covenant with Lot 1 DP 315057 - maximum height of vegetation within Area X - 2m

Areas AA and Y - Proposed land covenant with Lot 1 DP 484251 - maximum height of vegetation within Areas AA and Y - 2m

Amalgamation Condition: That Lot 3 hereon be held together with Lot 1 DP 315057 and one registered title issued herewith.

Signed: .....

Date: 20/10/2021

This Plan to be used for Resource Consent Purposes Only
Area and Dimensions are subject to Land Transfer Survey

TAYLOR PATRICK
SURVEYING PLANNING ENGINEERING
Huatoki Business Centre
17a Brougham Street
PO Box 4254
New Plymouth 4310
p 06 758 1021
m 021 543 880
stefan@taylorpatrick.co.nz

REV	AMENDMENT	BY	DATE
03	Added Areas Y and AA	SK	13/10/21
02	Add Lot 3 and Area X	TB	30/09/21
01	Move driveway for Lot 2	TB	23/09/21

Beaton
249 Weld Road Lower
Tataraimaka

Lots 1 to 3 being a proposed subdivision of Lot 2 DP 484251

DESIGNED:	DATE:	SIGNATURE:	PLOT DATE: 30/09/21
DRAWN: TB	DATE: 17/04/21	SIGNATURE:	CAD REF:
CHECKED:	DATE:	SIGNATURE:	CAD XREF:
APPROVED:	DATE:	SIGNATURE:	SURVEY BY: not surveyed
			SURVEY DATE:
			12D REF:

PLOT STATUS: For Neighbours Approval

PROJECT NUMBER:	SCALES:	
21089	1:1250 @ A3	
DRAWING No: 100		REV: 03

c:\12d5\data\GRAENPCV\21089-249 Weld Road_203\300 Working\21089 Scheme.12dmdel 21089 Scheme Wed Oct 13 17:07:30 2021

View Instrument Details

Instrument No.	10058782.2
Status	Registered
Date & Time Lodged	19 Jun 2015 15:47
Lodged By	Steffensen, Lisa Ann
Instrument Type	Consent Notice under s221(4)(a) Resource Management Act 1991

Affected Computer Registers	Land District
685706	Taranaki
685707	Taranaki

Annexure Schedule: Contains 1 Page.

Signature

Signed by Colleen Ellen MacLeod as Territorial Authority Representative on 18/06/2015 03:12 PM

***** End of Report *****

CONSENT NOTICE PURSUANT TO SECTION 221 OF THE RESOURCE MANAGEMENT ACT 1991

IN THE MATTER of Lot 1 DP 393350

AND

IN THE MATTER of Subdivision Consent pursuant to Sections 105, 108, 220 and 221 of the Resource Management Act 1991

Pursuant to Section 221 of the Resource Management Act 1991 the New Plymouth District Council by resolution passed under delegated authority on 10 December 2014 imposed the following condition on the consent for subdivision of Lot 1 DP 393350 being LT 484251;

'Boundary fences along the boundaries of Lot 1 and 2 shall not be solid.'

'No habitable buildings shall be erected outside of the Area marked 'E', on Lot 2.

'The exterior roofs and walls of all buildings shall be restricted to recessive colours and materials with reflectivity values of less than 37%.'

'Should the sheds on the south-eastern boundary of Lot 2 be removed a 3m wide strip of native planting shall be established along this boundary.'

DATED at New Plymouth this 18th day of May 2015

Signed by the said
ROWAN MARGARET ANNE WILLIAMS

Authorised Officer
of the New Plymouth District Council

Document Number 6365986
Property ID: 97812
Resource Consent: SUB14/46269.01

Approved by Registrar-General of Land under No. 2007/6225

Easement instrument to grant easement or *profit à prendre*, or create land covenant

Sections 90A and 90F, Land Transfer Act 1952

Registrar-General of Land Approval 07/6225 ADLS

EI 7784375.1 Easement

Cpy – 01/04, Pgs – 006, 14/04/08, 15:06

DocID: 313097517

Land registration district

TARANAKI

Grantor *Surname(s) must be underlined or in CAPITALS.*

Kevin Francis THOMAS and Tracey Karen THOMAS

Grantee *Surname(s) must be underlined or in CAPITALS.*

Kevin Francis THOMAS and Tracey Karen THOMAS

Grant* of easement or *profit à prendre* or creation or covenant

The Grantor, being the registered proprietor of the servient tenement(s) set out in Schedule A, **grants to the Grantee** (and, if so stated, in gross) the easement(s) or *profit(s) à prendre* set out in Schedule A, **or creates** the covenant(s) **set out** in Schedule A, with the rights and powers or provisions set out in the Annexure Schedule(s).

Dated this 11th day of April 2008

Attestation

Tracey Thomas K. Thomas **Signature [common seal] of Grantor**	**Signed in my presence by the Grantor** *Signature of witness* *Witness to complete in BLOCK letters (unless legibly printed)* **Witness name** **Occupation** NICOLA MAREE PATTERSON SOLICITOR • NEW PLYMOUTH NICHOLSONS LAWYERS & NOTARY PUBLIC **Address**
Tracey Thomas K. Thomas **Signature [common seal] of Grantee**	**Signed in my presence by the Grantee** *Signature of witness* *Witness to complete in BLOCK letters (unless legibly printed)* **Witness name** **Occupation** NICOLA MAREE PATTERSON SOLICITOR • NEW PLYMOUTH NICHOLSONS LAWYERS & NOTARY PUBLIC **Address**

Certified correct for the purposes of the Land Transfer Act 1952.

[Solicitor for] the Grantee

*If the consent of any person is required for the grant, the specified consent form must be used.

REF: 7003 – AUCKLAND DISTRICT LAW SOCIETY

Approved by Registrar-General of Land under No. 2007/6225

Annexure Schedule 1

Easement instrument Dated 11 April 2008 Page 1 of 3 pages

Schedule A *(Continue in additional Annexure Schedule if required.)*

Purpose (nature and extent) of easement, *profit*, or covenant	Shown (plan reference)	Servient tenement (Identifier/CT)	Dominant tenement (Identifier/CT *or* in gross)
Restrictive Land Covenant	393350.	373769 373770 373771 373772 373773	373769 373770 373771 373772 373773

Delete phrases in [ ] and insert memorandum number as required.
Continue in additional Annexure Schedule if required.

Easements or *profits à prendre* rights and powers (including terms, covenants, and conditions)

~~Unless otherwise provided below, the rights and powers implied in specific classes of easement are those prescribed by the Land Transfer Regulations 2002 and/or the Fifth Schedule of the Property Law Act 2007.~~

~~The implied rights and powers are **[varied] [negatived] [added to]** or **[substituted]** by:~~

~~[Memorandum number , registered under section 155A of the Land Transfer Act 1952].~~

~~[the provisions set out in Annexure Schedule 2].~~

Covenant provisions
Delete phrases in [ ] and insert memorandum number as required.
Continue in additional Annexure Schedule if required.

The provisions applying to the specified covenants are those set out in:

~~[Memorandum number , registered under section 155A of the Land Transfer Act 1952]~~

[Annexure Schedule 2].

All signing parties and either their witnesses or solicitors must sign or initial in this box

REF: 7003 – AUCKLAND DISTRICT LAW SOCIETY

Approved by Registrar-General of Land under No. 2002/5032

Annexure Schedule

Insert type of instrument
"Mortgage", "Transfer", "Lease" etc

Easement	Dated	11 April 2008	Page	2	of	3	Pages

(Continue in additional Annexure Schedule, if required.)

The Registered Proprietor(s) of the servient tenement for the benefit of the Registered Proprietor(s) of the dominant tenement shall be bound by the stipulations and restrictions as set out below and the Registered Proprietor(s) of the dominant tenement may enforce the observance of such stipulations and restrictions against the Registered Proprietor(s) of the servient tenement HOWEVER none of the servient lots shall have the benefit of the land covenenats described below in favour of the corresponding dominant lot.

The Registered Proprietor shall not at any time bring on to or erect or permit to be erected or placed on the land any second hand dwelling or any buildings or structures of any kind whatsoever which has been previously located or erected on any other land.

If this Annexure Schedule is used as an expansion of an instrument, all signing parties and either their witnesses or solicitors must sign or initial in this box.

REF: 7025 – AUCKLAND DISTRICT LAW SOCIETY

Approved by Registrar-General of Land under No. 2003/6150

Annexure Schedule - Consent Form

Land Transfer Act 1952 section 238(2)

Registrar-General of Land Approval 03/6150EF A.D.L.S.

Insert type of instrument
"Caveat", "Mortgage" etc

Easement Instument

Consentor *Surname must be underlined or in CAPITALS*	**Capacity and Interest of Consentor** *(eg. Caveator under Caveat no./Mortgagee under Mortgage no.)*
ANZ NATIONAL BANK LIMITED	**Mortgagee under Mortgage number 6510539.9**

Consent

Delete Land Transfer Act 1952, if inapplicable, and insert name and date of application Act.
Delete words in [ ] if inconsistent with the consent.
State full details of the matter for which consent is required.

Pursuant to [section 238(2) of the Land Transfer Act 1952]

~~[section of the Act]~~

[Without prejudice to the rights and powers existing under the interest of the Consentor]

the **Consentor hereby consents** to:

The registration of the within land convenant

Dated this 9th day of April 2008

Attestation

ANZ National Bank Limited by its Attorney KAPUA KATRINA GARDINER	**Signed in my presence by the Consentor** **Signature of Witness** *Witness to complete in BLOCK letters (unless legibly printed)* **Witness name** **Occupation** JEANNE ANN FAOAGALI BANK OFFICER **Address** AUCKLAND
Signature of Consentor	

An Annexure Schedule in this form may be attached to the relevant instrument, where consent is required to enable registration under the Land Transfer Act 1952, or other enactments, under which no form is prescribed.

REF: 7029 – AUCKLAND DISTRICT LAW SOCIETY

CERTIFICATE OF NON-REVOCATION OF POWER OF ATTORNEY

I, **KAPUA KATRINA GARDINER,** Manager Lending Services of Auckland in New Zealand, certify that:

1. By Deed dated 28 June 1996 deposited in the Land Registry Offices situated at:

Auckland	as No.	D.016180	Hokitika	as No.	105147
Blenheim	as No.	186002	Invercargill	as No.	242542.1
Christchurch	as No.	A.256503.1	Napier	as No.	644654.1
Dunedin	as No.	911369	Nelson	as No.	359781
Gisborne	as No.	G.210991	New Plymouth	as No.	433509
Hamilton	as No.	B.355185	Wellington	as No.	B.530013.1

The ANZ National Bank Limited of Wellington, New Zealand, appointed me its attorney.

2. That I have not received notice of any event revoking the power of attorney.

SIGNED by the abovenamed)
Attorney at Auckland on this)
9th day of April 2008)

KAPUA KATRINA GARDINER

indonline User ID: powderhamlsne

LODGING FIRM: Powderham Legal Services Ltd

Address: DX NP90008
NEW PLYMOUTH

lifting Box Number:

SOCIATED FIRM: NICHOLSONS

Client Code / Ref: NP1900.13

HEREWITH

Survey Plan (#)	
Title Plan (#)	
Traverse Sheets (#)	
Field Notes (#)	
Calc Sheets (#)	
Survey Report	

Other (state)

Dealing / SUD Number: (LINZ Use only)

Priority Barcode/Date Stamp (LINZ use only)

EI 7784375.1 Easement I
Cpy – 02/04, Pgs – 006, 14/04/08, 15:06

Copies (inc. original)
DocID: 313097617

Plan Number Pre-Allocated or to be Deposited:

Rejected Dealing Number:

y Order	CT Ref.	Type of Instrument	Names of Parties	DOCUMENT OR SURVEY FEES	RESUBMISSION	NOTICES	ADVERTISING	NEW TITLES	OTHER	PRIORITY CAPTURE	FEES $ GST INCLU
1	373769 TO 373773 INC.	EI	K & T THOMAS	60.00							$60.
2											
3											
4											
5											
6											

LAND INFORMATION NEW ZEALAND
15 APR 2008

Information New Zealand Lodgement Form

Fees Receipt and Tax Invoice

GST Registered Number 17-022-895

LINZ Form P005

Annotations (LINZ use only)

Original Signatures? _____

Subtotal (for this page)	$60.
Total for this dealing	$60.
Less Fees paid on Dealing #	
Debit my Account for	**$60.**

LINZ Form P005 - PDF

Version 1.8: 1 September

Appendix 2. Planners report and decision – Original Consent

Te Kaunihera-ā-Rohe o Ngāmotu
New Plymouth District Council

When replying please quote: SUB22/48035

27 May 2022

Graeme and Tracey Beaton
C/- Taylor Patrick Surveyors
EMAIL: Stefan@taylorpatrick.co.nz

Dear Stefan,

CONSENT SUB22/48035 IS GRANTED FOR A 3-LOT RURAL SUBDIVISION TO BE UNDERTAKEN 249 WELD ROAD LOWER, TATARAIMAKA

I am pleased to be able to **enclose** a copy of a Resource Consent Approval, and my Planners Report prepared under the Resource Management Act 1991, for the above project.

If you are unhappy with any part of this decision you have the right to object in accordance with Section 357A(2) of the Resource Management Act 1991. Any objection shall be made in writing, setting out the reasons for the objection. This must be lodged with Council within 15 working days after receiving this decision.

Any monitoring or time involved in ensuring compliance may result in extra charges being invoiced to you. Therefore, to reduce additional charges payable to you, please ensure that you comply with the conditions of the Resource Consent as soon as possible. Additionally, to reduce administration costs, please contact one of Councils Monitoring Officer's on 759 6060 or email enquiries@npdc.govt.nz to inform us when work is about to commence.

Extension of Timeframe

The purpose of this letter is also to formally extend the timeframe within which the decision is to be issued, under sections 37 & 37A of the Resource Management Act 1991 (RMA). Section 115(3) of the RMA states that for applications not notified and where a hearing is not held, notice of the decision and a notification decision must be given within 20 working days after the date the application was first lodged with the authority.

However, under sections 37A(4)(a) & (b), it is advised that these timeframes for issuing the notification decision and consent decision have been extended to 40 working days. The time extension was necessary as New Plymouth District Council are experiencing higher volumes of resource consents than usual.

The consent authority also recognises its duty under s21 to avoid unreasonable delay. Given the reasons above for extending timeframes, it is considered the 20 extra working days are reasonable.

Yours sincerely,

BRook.

Bridget Rook
ENVIRONMENTAL PLANNER

RESOURCE CONSENT SUB22/48035

Granted under Sections 95, 104, 104B, 104D, 108 and 220 of the Resource Management Act 1991.

Applicant:	Graeme and Tracey Beaton
Location:	249 Weld Road Lower, Tataraimaka
Legal Description:	LOT 2 DP 484251 held in RT 685707
Proposal:	3-lot rural subdivision and amalgamation
Status:	The proposal is subject to rules Rur78, Rur79, Rur81, Rur82, Rur83 and Rur84 and is a Non-Complying Activity under the Operative District Plan.

DECISION:

In accordance with Sections 95A-E, 104, 104B, 104D, 108 and 220 of the Resource Management Act 1991, consent is granted on a non-notified basis to subdivide LOT 2 DP 484251 into three allotments as shown on the scheme plan submitted with the application SUB22/48035 submitted by Taylor Patrick Surveyors, entitled 'Lots 1 to 3 being a proposed subdivision of Lot 2 DP 484251', project no. 21089, drawing no. 100, dated 30/09/21 for the reasons discussed in the planners report as summarised below:

1. the proposal will not significantly affect existing levels of rural character and amenity;
2. adequate access, services and building platforms can be provided;
3. any adverse effects of the proposal on the environment will be no more than minor;
4. the proposal is consistent with the relevant objectives and policies of the District Plan, Proposed District Plan, Regional Policy Statement and relevant National Policy Statement;
5. there are no reasons to refuse consent under Section 106; and
6. the proposal meets the Purpose of the Resource Management Act.

Subject to the following conditions imposed under Section 108 of the Resource Management Act 1991:

1. The subdivision activity shall be carried out in accordance with the plans and all information submitted with the application and all referenced by the Council as consent number SUB22/48035.

Section 223 approval

2. The survey plan shall generally conform with the subdivision scheme plan submitted with application no: SUB22/48035 submitted by Taylor Patrick Surveyors, entitled 'Lots 1 to 3 being a proposed subdivision of Lot 2 DP 484251', project no. 21089, drawing no. 100 and dated 30/09/21.

Amalgamation Condition

3. That Lot 3 hereon be held together with Lot 1 DP 315057 and one registered title issued herewith. Refer to LINZ Request ref: 1786092.

Section 224 approval

Septic Tank

4. Confirmation is required that existing septic tank and effluent field serving the site are contained wholly within the boundaries of Lot 1.

   Advice note: *Lot 2 shall require on-site septic treatment for sewerage. The Lot shall require enough room for on-site septic tank, soakage field and reserve area, taking into account the required distance from boundaries and area required for on-site stormwater disposal.*

Stormwater

5. Any dwelling constructed on Lot 2 shall not change or disrupt the existing overland flowpath network. The applicant shall dispose of the stormwater in a way that does not create a nuisance to neighbouring land and/or property.

Vehicle Crossing

6. A *type G* sealed vehicle crossing shall be constructed to serve Lot 2 to the Standard specified in the Council's Land Development & Subdivision Infrastructure Standard. An application with the appropriate fee shall be made to the Council for a new Vehicle Crossing, and upon approval the vehicle crossing is to be installed by a Council approved contractor at the applicant's cost.

7. Any excavation that takes place within road reserve during this development shall require an approved Corridor Access Request (CAR). Refer to the "National Code of Practice for Utility Operators' Access to Transport Corridors" for additional information. Applications can be made via the website www.beforeUdig.co.nz or 0800 248 344. A CAR along with a Traffic Management Plan must be submitted a minimum of 5 working days before an operator intends to start work for minor works or 15 working days for major works and project works. All costs incurred shall be at the applicant's expense.

General

8. All work shall be constructed under the supervision of a suitably qualified person who shall also certify that the work has been constructed to the approved Infrastructure Standard requirements.

9. The supervision of the work, and its certification and the provision of as built plans shall be as prescribed in section 1.8 of NPDC Land Development & Subdivision Infrastructure Standard.

10. A Council inspection fee shall apply at cost.

11. The consent holders shall pay the Council's costs of any monitoring that may be necessary to ensure compliance of the use with the conditions specified.

Consent notice

12. Conditions 13-25 below shall be imposed by way of a consent notice registered against the new Record of Title of Lots 1-3 pursuant to Section 221 (while the land remains in the Rural Environment Area).

Lot 1

13. No habitable buildings shall be erected outside of the Area marked E on Lot 1.

14. A maximum of one habitable dwelling shall be permitted on Lot 1.

Lot 2

15. No habitable buildings shall be erected outside of the Area marked Z on Lot 2.

16. A maximum of one habitable dwelling shall be permitted on Lot 2.

17. No habitable buildings shall exceed 5.5m in height above existing ground level.

18. Roofs of all new buildings (habitable and non-habitable) shall be a recessive shade (less than 20% Light Reflectance Value (LRV)).

19. Cladding materials (including walls and gable ends, excluding glazing and joinery) of all new buildings (habitable and non-habitable) shall be a recessive shade (less than 40% Light Reflectance Value (LRV)).

20. Water tanks and guttering shall be a recessive shade, with a light reflectance value (LRV) of less than 25% LRV.

21. Any fencing of new boundaries shall consist of post and rail, or wire post and batten fencing.

22. No closed board fencing taller than 1.2m high should be located further than 10m from any building (taller fencing within 10m of dwellings is permitted to enable privacy of courtyards etc).

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

24. Any cut or fill batters greater than 1.5m in height should be laid back at an angle suitable for planting or grassing. This angle should be no steeper than 1:1.

Lot 3

25. No habitable buildings shall be erected within Lot 3 hereon.

Advice notes:

Consent Lapse Date

1) *This consent lapses on **27 May 2027** unless the consent is given effect to before that date; or unless an application is granted before the expiry of that date under section 125 of the Resource Management Act 1991 to extend the expiry date.*

   This consent is subject to the right of objection as set out in section 357A of the Resource Management Act 1991.

Development Contribution

2) *A Development Contribution for off-site services of **$3,176.66 excluding GST** for Lot 1 is payable by the applicant and shall be invoiced separately. The 224 release of this subdivision will not be approved until payment of this contribution is made.*

Damage to council assets

3) The owner is required to pay for any damage to the road or Council assets that results from their development. The developer must notify the Council of any damage and the Council will engage their contractor to carry out the repair work. The owner, builder/developer or appointed agent responsible for building/development work must repair, to the satisfaction of Council, damaged roads, channels drains, vehicle crossings and other assets vested in council adjacent to the land where the building/construction work takes place.

Safe and continuous passage by pedestrians and vehicles shall be provided for. Footpath or road shall be restored to the Council's satisfaction as early as practicable.

Developers are required to pay for any damage to the road or street that results' from their development. The developer must employ a council approved contractor to carry out such work.

Infrastructure Standards

4) All the above works are to be designed and constructed in accordance with the following current and relevant New Plymouth District Council's Land Development & Subdivision Infrastructure Standard.

5) Other alternative solutions may be approved for those aspects where the Infrastructure Standards are unable to be met or can be achieved in a different way.

Water Supply

6) There is no reticulated water supply available to the site. Any dwelling constructed on Lot 2 will require provision for the water needs of the project in accordance with the provisions of the Building Code. The activity will require you to provide for its own potable water supply in accordance with the standards specified by the Building Code. Details showing how this is to be provided for will need to be provided as part of the Building Consent application for the project. Bore or well water supply will require a water quality test and results report. No firefighting water is available to this development. It is recommended that a 75mm instantaneous female coupling and valve be fitted to any water storage tanks that may be constructed as part of this work. The requirements of the New Zealand Fire Services Firefighting Water Supplies Code of Practice may have to be met.

DATED:

Zane Wood
Planning Consents Lead

Te Kaunihera-ā-Rohe o Ngāmotu
New Plymouth District Council

S42A PLANNER'S REPORT TO THE PLANNING CONSENTS LEAD FOR SUBDIVISION CONSENT

Application Number:	SUB22/48035
Proposal:	3-lot rural subdivision
Applicant:	Graeme and Tracey Beaton
Site Address:	249 Weld Road Lower, Tataraimaka
Legal Description:	LOT 2 DP 484251 held in RT 685707 (issued 19/06/2015) Relevant Interests: • Easement 360024.3 - Right to convey electricity over parts marked B and C on DP 484251 • Easement 7784375.1 – Right to convey water over park marked D on DP 484251 • Consent Notice 10058782.2
Site Area:	5.6251 hectares
Zone:	Operative District Plan: Rural Environment Area Proposed District Plan: Rural Production Zone
District Plan Overlays:	Operative District Plan: N/A Proposed District Plan: Controlled Area – Keeping of Goats
Activity Status:	Operative District Plan: Non-complying Proposed District Plan: N/A

SITE DESCRIPTION AND SURROUNDING ENVIRONMENT

1. The subject site and surrounding area has been described in part 2.0 of the application and adopted here. In summary, the subject site is a 5.6251ha rural block that fronts Weld Road and is bounded by other lifestyle blocks created under the parent title and adjacent parent title. The site is mainly pasture and contains an existing dwelling, garaging and associated sheds. Access is via a private driveway. There are no streams or waterbodies on or adjoining the site.

2. The site was created under subdivision consent SUB14/46269 which was a 2 lot rural subdivision.

3. A site visit was undertaken on 26 April 2022.

Figure 1: Aerial of subject site and surrounding area


Figure 2: Facing north showing proposed building platform on Lot 2.

Figures 3 and 4: Facing west from the building platform on Lot 2.

CONSENT HISTORY

4. The applicants agent has looked into the subdivision history and provided the following information in the application:

> The parent title is Lot 2 DP 16300 12.5447 ha, created in 1988 and contained in TN12/1100. We have reviewed historic subdivision since 1988 of that title and count the following **four** parcels as being created from this parent – Lot 1 DP 315057 (0.7455 ha), Lot 1 DP 328657 (0.8006 ha), Lot 2 DP 393350 (4.0616 ha) and Lot 1 DP 484251 (0.5329 ha) leaving a balance of Lot 2 DP 484251 (5.6251ha) – which is the application site.
>
> It is also relevant to note that the adjoining parent title Lot 2 DP 15900 (TN 12/1100) 9.2795ha created in 1987 has also had subdivision – this being the following **three** parcels Lot 2 DP 432478 (1.2307ha), Lot 1 DP 500285 (0.5747ha) and Lot 2 DP 500285 (3.8058 ha) with a balance lot of Lot 1 DP 432478 (4.4766 ha).
>
> These two parent parcels sum to 21.8342 ha, all of the new lots listed above add to 21.8535 ha, a difference of 200 sqm which is a rounding difference due to stream boundaries and illustrates that all land in the Parents has been accounted for here.
>
> Overall, we consider that the proposed subdivision is the fifth smaller allotment from the parent, with a balance of > 4ha remaining in proposed Lot 2, thus we assess the proposal as meeting the **Discretionary Activity** standard of Rule 78 ODP.

5. The above information has been checked by Bridget Rook and is correct.

PROPOSAL

6. The proposal is to subdivide LOT 2 DP 484251 into three allotments, one of which will be amalgamated with the neighbouring site Lot 1 DP 315057. The subdivision will result in the creation of one new rural lifestyle allotment.

7. Proposed lot sizes are below:
    - Lot 1 - 1.3458ha (contains the existing house and surrounds)
    - Lot 2 - 4.1578ha (the vacant balance lot which will contain a proposed building platform)
    - Lot 3 - 0.1219ha (small area of vacant land to be amalgamated with adjacent site)

Figure 5: Scheme plan

STATUTORY REASONS FOR THE APPLICATION

National Environmental Standards

8. Regulations 5(4)(5)&(6) of the Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011 (NESC) describes subdivision, change of land use and disturbing soil as activities to which the NES applies. However, only where an activity that can be found on the Ministry for the Environment's Hazardous Activities and Industries List (HAIL) has or is likely to have occurred on the site.

9. The property has been used for agricultural purposes based on historical aerial imagery and information provided by the applicant. Traditionally farming in the area has been for dairy purposes. Some agricultural activities are included on the HAIL which may have occurred on

site, i.e. the storage of agrichemicals, storage of fuel, storage of tanalised wood, farm dumps, sheep dips and the use of asbestos materials for sheds/buildings. Therefore, under Section 5 of the NESC it is important to determine whether the site should be considered a "piece of land" under the NES to determine if further investigation is required and/or consents under the NESC 2011.

10. An assessment of the HAIL list has been carried out along with a site visit and emails with the applicant to ascertain the historical uses of the site. Based on the information acquired, I do not consider the site to be a "piece of land" under the requirements of the NES. I have also checked the TRC Selected Land Use register and NPDC's record systems and there are no recorded sites.

11. For the reasons discussed above further assessment against the NES is not required and the site is not considered to be "a piece of land".

Operative New Plymouth District Plan (2005)

12. The site is located within the Rural Environment Area and contains no overlays.

13. The site does not contain nor is adjacent to a Statutory Acknowledgement Area.

Rules

14. The proposal requires consent under the following District Plan rules:

Rule #	**Rule Name**	**Status of Activity**	**Comment**
Rur78	Minimum Lot size in a Rural Environmental Area and number of lots subdivided	Non-complying	The proposed subdivision will result in the creation of a fifth and sixth allotment from the parent title since the District Plan was deemed to be operative. There will be a balance lot of over 4ha (proposed lot 2). The sixth allotment to facilitate the boundary adjustment technically makes the application non-complying.
Rur79	Requirement to provide practicable vehicular access to allotments from a road	Controlled	The new access driveway to Lot 2 off Weld Road will be 6m in legal width which meets the requirement in Appendix 22.2A (Table 22.2B). A new rural vehicle crossing will be constructed. Lot 1 will be accessed via an existing vehicle crossing and 6m wide driveway.
Rur81	Requirement to adequately service the property	Controlled	Vacant lot 2 can be adequately serviced. Stormwater disposal to ground can be undertaken and an engineering report as a condition of consent is anticipated. Tank water stored from the roof is anticipated for water supply. Sewage disposal to ground is proposed. Lot 1 already has a dwelling with existing servicing and no development is proposed for Lot 3.

Rur82	Requirement for a building platfrom	Controlled	The proposed lot 2 is of a size that can accommodate a building platform that meets the requirements specified in Appendix 22.1.
Rur83	Requirement for existing buildings to meet standards in relation to the new boundaries	Controlled	Existing buildings will meet the requirements for distance from boundaries.
Rur84	Requirement for financial contributions	Controlled	Financial contributions required.

15. The proposal is non-complying activity under the Operative New Plymouth District Plan being the highest status under the above Operative Plan (bundling principle).

Proposed New Plymouth District Plan (Notified 23 September 2019)

16. The site is located within the Rural Production Zone and contains the *Controlled Area – Keeping of Goats* overlay.

17. No decisions have yet been made on the Proposed Plan.

18. There are no rules with immediate legal effect that apply to this proposal.

EFFECTS DISREGARDED

19. The following effects have been disregarded for the purposes of the notification decision and s104 assessment (s95D, 95E and 104(2)&(3)(a)):

- The permitted baseline has not been applied as no subdivision of any lot size has permitted status in the Operative or Proposed Plan.
- Effects on persons who own or occupy the site and adjacent sites have been disregarded for the public notification assessment.
- The application is for a non-complying activity therefore the assessment of adverse effects is not restricted and no such effects have been disregarded.
- I am not aware of any trade competition effects relating to this application.
- The written approvals of the following parties have been provided with the application and therefore any effects on them have been disregarded.

Map Identifier (Figure 6)	Name	Address
A	Beth and Neil Bentall	255 Weld Road Lower
B	Gregory and Katy Sheffield	271 Weld Road Lower
C	Stoney Bay Trustee Limited (Lisa Vale and Robert Bateman)	LOT 2 DP 486355 (no address yet but addressed 283 Weld Road Lower on written approval form)
D	Fi's Trees Limited (Christopher Waugh)	247 Weld Road Lower

E	Nick King and Siobhan Lottrell	247A Weld Road Lower
F	Angela and Steven Blair	247C Weld Road Lower
G	Hackling Family Trust	247B Weld Road Lower

- It is noted that parties B, C, D, E and G have signed revision 02 of the scheme plan and parties A and F have signed revision 03 which is the final submitted revision. The only change between the revisions is the later addition of a proposed land covenant marked areas A and YY which allows for a maximum vegetation height of 2m within these areas. The covenant is over proposed lot 2 and Lot 1 DP 315057 and does not affect those parties who have signed scheme plan revision 02.

Figure 6: Neighbours who have given written approval.

NOTIFICATION DECISION

Public Notification (s95A)

Step 1: mandatory public notification in certain circumstances

- The applicant has not requested that the application be publicly notified.
- The applicant has not refused to provide further information or refused to agree to commissioning a report under s95C.
- The application is not made jointly with an application to exchange recreation reserve land.

Step 2: if not required by step 1, public notification precluded in certain circumstances

- The application is not subject to a rule or national environmental standard that precludes notification.

- The application is not precluded from public notification.

Step 3: if not precluded by step 2, public notification required in certain circumstances

- There is no rule or NES that requires public notification of the application.
- If the activity will have or is likely to have adverse effects on the environment that are more than minor the application must be publicly notified.

Assessment of Adverse Effects on the Environment

20. Using the Operative and Proposed District Plan objectives and policies as guidance, I consider the main issues relate primarily to rural character and amenity values in the area, cumulative effects, rural servicing and vehicle access. An assessment is provided below:

Rural Character/Rural Amenity

- A Landscape and Visual Impact Assessment (LVIA) undertaken by Richard Bain of Bluemarble has been provided with the application. This LVIA states that *any potential effects on rural character from the proposal would be from the creation of Lot 2, as this enables an additional dwelling. The extent of change to Lot 1 is negligible given the existing dwelling. Lot 3 will also create negligible effects on rural character as it is a small lot that will be amalgamated with Lot 1 DP 315057 (271 Weld Road Lower).* Mr Bains LVIA report further states that *effects from the creation of Lot 2 are reduced by the identification of a Proposed Building Platform (Area Z on Subdivision Scheme Plan). This tucks the dwelling towards the embankment and prevents the wider open space on Lot 2 being built on. The access way represents a small change and in combination with the dwelling creates a very low effect on landscape character.*

- I concur with the comments above from Mr Bain and also note that due to the Proposed Building Platform being tucked into the embankment, it is very unlikely that any future dwelling on Lot 2 will be visible from Weld Road. There may be potential views from Timaru Road towards the site, however these views are in a specific location and not of a continuous nature. Regarding views from the wider area, it is considered that any loss of spaciousness beyond the neighbouring properties will be negligible.

- The LVIA undertaken by Richard Bain also recommends mitigation conditions that the applicant has adopted and offered to form part of the application. The conditions are listed within clause 3.0 of the application document. I concur that these conditions will aid in mitigating adverse effects on rural character and these will therefore be imposed by way of a consent notice registered against the new Record of Title of Lots 1-3 pursuant to Section 221 (while the land remains in the Rural Environment Area).

- For the above reasons it is considered that any adverse effects on rural character and rural amenity will be no more than minor. I concur with Mr Bains conclusion in his report stating that *With mitigation, the subdivision will not alter the areas rural character beyond a minor degree.*

Lot Size

- Proposed Lots 1 and 2 have site areas of 1.3458ha and 4.1578ha which meet the allotment size and are considered appropriate and acceptable for the rural environment area. Lot 2 also meets the required 4ha requirement for the balance lot. The creation of a 5th lot from the parent title is a discretionary. However, the proposal is technically non-complying under Rule Rur78 as its creates a 6th lot (Lot 3) that is only 1219m^2 and smaller than what is typically envisaged within the Rural Environment Area. Despite being a 6th lot that does not meet the minimum allotment size, this narrow lot will be amalgamated with neighbouring site Lot 1 DP 315057 and is essentially aiding a boundary adjustment. As such, it is considered that the lots are considered an appropriate size for the Rural Environment Area.

Cumulative Effects

- Because the area contains a high number of rural residential sized allotments and a 5th lots is being created from the parent title, it is necessary to address any cumulative effects. Mr Bains report states that *the character of this area is defined by those smaller allotments, so the proposal is consistent with this character and does not tip it to another character type. The configuration of the proposal is helpful in this regard as the new lot boundaries follow the topography and the new dwelling platform location is specified. There will be no sequential effects as the proposal is not visible from Weld Road and is indistinct from Timiru* (Timaru) *Road.* I concur with these comment from Mr Bain and consider any adverse cumulative effects will be no more than minor.

Building Platform and Bulk and Location Requirements

- The proposed building platform has been assessed in Mr Bains LVIA report and he considers this location to be appropriate to ensure that the dwelling will not be prominent in the area. I concur this Mr Bain that this proposed building platform is satisfactorily located. Design controls on buildings (habitable and non-habitable) offered in the application will further reduce any visual impact that may occur. It is expected that given the topography of Lot 2, any cut and fill earthworks are likely to be relatively small and limited to creating a building platform and accessway only.

Traffic/Road Safety

- The existing vehicle access to Lot 1 is considered acceptable, has good visibility and will remain unchanged. Lot 3 is entirely paddock and accessed via a gate. This will remain unchanged and is being amalgamated with the adjacent lot. A new vehicle crossing will be created of Weld Road to serve lot 2. Councils Development Engineer Matt Sanger has reviewed that application and is satisfied with this proposed vehicle crossing shown on the scheme plan.

- The proposal will create additional traffic generation on Weld Road due to a new dwelling, however Weld Road is a Local Road and can absorb any additional traffic from the new lot.

- For these reasons it is considered that any adverse effects on traffic and road safety will be no more than minor.

Servicing

- The existing dwelling on proposed Lot 1 is self-sufficient for water supply, wastewater and stormwater disposal. Vacant lot 2 can be adequately serviced. Stormwater disposal to ground can be undertaken and water supply can be provided via water tanks. Sewage disposal to ground is proposed.

Conclusion

- Overall, it is in my opinion that the effects of the proposal on the environment will be no more than minor any potential effects are able to be avoided, remedied or mitigated.

Step 4: public notification in special circumstances

21. No special circumstances exist that warrant the application being publicly notified.

Conclusion on public notification

22. It is concluded under s95A of the RMA that the application does not need to be publicly notified.

Limited Notification (s95B)

Step 1: certain affected groups and affected persons must be notified

- No protected customary rights groups or customary marine title groups are affected by the activity.
- The proposal is on land that does not contain nor is adjacent to a Statutory Acknowledgement Area.

Step 2: if not required by step 1, limited notification precluded in certain circumstances

- The application is not subject to a rule or national environmental standard that precludes notification.
- The application is not precluded from limited notification.

Step 3: if not precluded by step 2, certain other affected persons must be notified

- A person is affected if the consent authority decides that the activity's adverse effects on the person are minor or more than minor.

Assessment of Affected Parties

23. This application included written approvals from adjacent sites. Those who have provided written approvals are details in paragraph 19 earlier. Adverse effects on these neighbours have been disregarded.

24. Adjacent properties who have not provided written approval are numbered 1-5 below:

Figure 4: Location Map of Site and Potentially Affected Parties

25. Properties labelled 1 and 3 – These properties are separated from the subject site via existing access-legs, therefore they are not directly adjoining the subject site. However they are

considered adjacent properties due to being in the near vicinity of the subject site. Dwellings on these properties are likely to have only minimal views of the future dwelling due to being well separated from the building platform and at a higher ground level. It is also expected that other dwellings and vegetation in-between will provide screening.

26. Property labelled 2 - This is a vacant site but is likely to have a new dwelling in the near future. From the proposed building platform on Lot 2, you can't see down into this neighbouring property as there is a decent drop down to the river terrace that occurs around the boundary line. For this reason it is unlikely that that a dwelling on the neighbouring site would have views into the building platform on Lot 2.

27. Properties labelled 4 and 5 - These sites are across the road from the subdivision site. These neighbours won't have any views of the proposed building platform and the subdivision. The only visible change will be the new vehicle crossing. Therefore rural character and existing amenities will be retained for these adjacent sites.

28. Access and traffic - The existing dwelling on Lot 1 will continue to utilise the existing vehicle crossing of Weld Road Lower. A new driveway and vehicle crossing for Lot 2 will be constructed which Councils Development Engineer Matt Sanger is satisfied with. The traffic volumes likely to be generated by the subdivision will not be discernible within the existing rural environment and will have less than minor effects on adjacent person's ability to access the roading network.

29. Conclusion – For the reasons above it is considered that adverse effects on adjacent sites will be less than minor.

Step 4: further notification in special circumstances

30. No special circumstances exist that warrant the application being limited notified.

Conclusion on limited notification

31. It is concluded under s95B of the RMA that the application does not need to be limited notified.

Overall Notification Decision

32. The application does not need to be notified under sections 95A – 95E of the RMA.

SECTION 104 ASSESSMENT

Assessment of Actual and Potential Effects on the Environment - S104(1)(a)

33. The assessment of adverse effects on the environment and people in the notification assessment is also relevant for the purposes of the assessment under s104(1)(a). Any effects on the wider environment will be no more than minor and effects on adjacent properties will be less more than minor. No further consideration of the adverse effects of the proposal is considered necessary under S104.

34. The proposal has been assessed by the Council's development engineer, Matt Sanger, in order to confirm that the proposed subdivision will not create undue pressure on infrastructure or traffic systems. Mr Sanger found that there was no anticipated undue pressure on traffic or infrastructure related to this proposal.

Conclusion

35. In summary, it is considered the actual and potential adverse effects of the proposal are able to be avoided, remedied or mitigated through the imposition of conditions and are therefore

acceptable.

Assessment of Proposal against Planning Documents - Section 104(1)(b)

Taranaki Regional Policy Statement

36. The proposal is consistent with the relevant provisions of the Operative Taranaki Regional Policy Statement (2010).

Operative District Plan

37. The following objectives and policies of the District Plan are relevant to this application:

Objective 1; Policy 1.1 – character and amenity
Objective 4; Policies 4.1, 4.2, 4.5, 4.8 – rural character
Objective 14; Policies 14.1 – preserve and enhance natural character
Objective 18; Policies 18.1 – Maintain and enhance access to the coast
Objective 20; Policy 20.7 – Road Transportation and safety
Objective 22; Policy 22.1 – Avoid the adverse effects of subdivision

38. The application is not contrary to the relevant objectives and policies of the Operative District Plan outlined above which relate primarily to the issues of amenity, rural character, subdivision, traffic safety and efficiency and natural character.

Proposed District Plan

39. The Objectives and Policies of the Proposed District Plan are required to be considered alongside those of the Operative District Plan as they have legal effect.

40. The following Objectives and Policies of the Proposed District Plan are relevant to this application:

RPROZ-O2, O3, O4, O6 - RPROZ-P1, P2, P4, P5 & P8
SUB-O1, SUB-O2 – SUB-P1, SUB-P2, P3, P10, P12, P13 & P14

41. The application is not contrary to the relevant objectives and policies of the Proposed District Plan outlined above which relate primarily to the issues of rural production and amenity, subdivision, traffic safety and servicing.

Other Matters - s104(1)(c)

42. The following other matters are considered relevant to the proposal:

Precedent

43. Precedent effect is a relevant factor for Council to take into account in this instance. A precedent reflects the concern that a granted application may have influence on the assessment of future applications.

44. I agree with the applicant that the site is unique and will not provide likely opportunity for others to claim that they have a similar proposal. The unique aspect is that the site is within a cluster of lots that are not visible from Weld Road and only partially visible from Timaru Road (at a distance). This subdivision will create a 5th allotment from the parent title and therefore cumulative effects have been addressed in the LVIA provided in the application which states *There will be no sequential effects as the proposal is not visible from Weld Road and is indistinct*

from Timiru (Timaru) *Road.* I concur with this comment.

45. It is also noted that all surrounding sites containing dwellings have provided written approval and therefore effects on these neighbours have been disregarded.

46. Overall and for the reasons given above, I consider that the grant of the application would not set a precedent which will influence the way in which future applications are dealt with.

Non-Complying 'Gateway' Test - s104D

47. It is considered, based on the above assessment that the effects of the proposal will be minor. It is also considered that the proposal is not contrary to the objectives and policies of the operative and proposed District Plans. Overall, the proposal passes both threshold tests as set out in s104D(1), and as such, Council may consider granting consent to the proposal if appropriate under s104 of the Act.

Particular Considerations for Subdivision (s106)

- There are no identified natural hazards affecting the site subject to subdivision.
- Sufficient provision has been made for legal and physical access to each allotment created by the subdivision.
- There is no reason to decline this application under section 106 of the RMA.

Overall Assessment to Grant or Decline

48. I conclude the effects of the proposal are acceptable and the proposal is not contrary to the objectives and policies of the relevant plans, including the Operative and Proposed District Plans. The application can be granted under the Operative District Plan.

Weighting between District Plans

49. A weighting exercise is not required as a decision has not yet been made on any rules relevant to this application under the Proposed District Plan.

PART 2 of the RMA

50. Having regard to the above assessment it is concluded that the proposal is consistent with the Part 2 of the Resource Management Act 1991 as the proposal achieves the purpose of the RMA being sustainable management of natural and physical resources.

RECOMMENDATION

51. That for the above reasons the application be approved on a non-notified basis pursuant to Sections 95A-E, 104, 104B, 104D, 108 and 220 of the Resource Management Act 1991, subject to the conditions suggested within resource consent SUB22/48035 attached to this document.

Report Details

Prepared By:	Bridget Rook (Environmental Planner)
Team:	Planning – Customer and Regulatory Services
Approved By:	Zane Wood (Planning Consents Lead)
Date:	27 May 2022
Document No.:	8776436

Appendix 3. Decision – Roach and South Taranaki Trustees (Woolcombe Terrace)

Te Kaunihera-ā-Rohe o Ngāmotu
New Plymouth District Council

When replying please quote: ECM9509713
LUC24/48512

4 June 2025

Applicant and Submitters

Dear Hearing Parties

INDEPENDENT COMMISSIONER DECISION

Please find attached a copy of the Hearing Commissioner's decision in relation to the application by Bryan and Kim Roach & South Taranaki Trustees Limited for construction of a new dwelling and associated fencing and retaining walls (retrospective) at 24/26 Woolcombe Terrace, New Plymouth.

If you are unhappy with the decision, you have the right to appeal to the Environment Court in accordance with section 120 the Resource Management Act 1991. The notice of appeal must be set out in accordance with Form 16 of the Resource Management (Forms, Feeds, and Procedure) Regulations 2003 and be lodged with the filing fee to the Environment Court within 15 working days after receiving this decision. The procedure for lodging an appeal is set out in section 121 of the Resource Management Act 1991.

Yours faithfully

Julie Straka
MANAGER GOVERNANCE

DECISION REPORT ON RESOURCE CONSENT APPLICATION LUC24/48512 TO NEW PLYMOUTH DISTRICT COUNCIL

BRYAN & KIM ROACH AND SOUTH TARANAKI TRUSTEES LTD

24 & 26 Woolcombe Terrace, New Plymouth

4 June 2025

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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:	LUC24/48512
Applicant:	Bryan & Kim Roach and South Taranaki Trustees Limited
Proposal Summary:	Retrospective resource consent is sought for the construction of a new dwelling and associated fencing and retaining walls
Site Address:	24 & 26 Woolcombe Terrace, New Plymouth
Legal Description:	Part Lot 1 DP 4522 & Part Lot 2 DP 5012 (RT 961499)
Site Area:	904m^2
Date of Application:	10 June 2024
Relevant District Plan:	Proposed New Plymouth District Plan (Appeals Version 7, 23 December 2024F)[1]
Applicable Zoning and Overlays:	Medium Density Residential Zone / Coastal Environment
Relevant District Plan Provisions:	Strategic Direction – Urban Form & Development, Medium Density Residential Zone, and Coastal Environment Chapters.
Application Activity Status:	Discretionary Activity (Rule CE-R5) is the overall status.[2]

Table 2 – Hearing Summary Details

Hearing Date:	27 March 2025

[1] Being the version of the Proposed District Plan applying at the time of the hearing, Appeals Version 8 is now the current version as I set out in the body of this decision.

[2] The Land Use Consent is also potentially subject to MDRZ rules: MRZ-R1, MRZ-R4, MRZ-R31 and MRZ-R33, which result in Restricted Discretionary Activity status as outlined in the body of this decision. There was disagreement amongst the planning witnesses as to whether MRZ-R1 and MRZ-R33 apply. Whether those rules are applicable or not, would have no effect on the determination of overall status.

Independent Commissioner:	Philip McKay
Appearances for Applicant:	Scott Grieve – Legal Counsel Bryan Roach – Applicant Representative Kyle Arnold – Architecture Jono Mudoch – Architectural Shadding Assessment Daniel McEwan – Landscape & Visual Effects Richard Bain – Landscape & Visual Effects Peer Review Benjamin Lawn – Planning *(Alan Doy – Surveying, prepared a statement of evidence but was excused from attending the hearing).*
Appearances for Submitters:	Aiden Cameron – Legal Counsel Geoffrey Whyte – Submitter on behalf of himself and Johanna Whyte Emma McRae – Landscape & Visual Effects Kathryn Hooper – Planning
Appearances for New Plymouth District Council:	Campbell Robinson – Section 42A Reporting Officer Julie Straka (Manager Governance) – Hearings Administrator
Commissioner's Site Visit:	Undertaken on 27 March 2025 (prior to hearing)
Hearing Closed:	13 May 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,[3] 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 Bryan & Kim Roach and South Taranaki Trustees Limited ("the Applicant") was limited notified to the owners and occupiers of 28 Woolcombe Terrace, New Plymouth.[4] A submission in opposition was subsequently received from the owners[5] and occupiers of that property, Geoffrey and Johanna Whyte.[6]

3. I was appointed to hear and determine the application in December 2024. Directions for the pre-exchange of reports and evidence were issued as part of the hearing notice, on 27 January 2025.

4. I conducted a visit to the site of the application, 24 & 26 Woolcombe Terrace, New Plymouth ("the Site") on the morning of the hearing 27 March 2025. I was accompanied by a Council Governance Advisor, Ms Claire Kelly, who was not involved with the processing of this application nor the hearing. We also visited the submitter's property and residence at 28 Woolcombe Terrace, New Plymouth.

1.3 MATERIAL CONSIDERED AND HEARING PROCESS

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

    a. The retrospective resource consent application and assessment of environmental effects for 24 / 26 Woolcombe Terrace, New Plymouth for Bryan & Kim Roach prepared by McKinlay Surveyors, and dated 7 June 2024 ("the Application" or "the AEE");[7]

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[3] 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.

[4] Following the Notification Decision of Campbell Robinson and Richard Watkins under delegated authority for New Plymouth District Council, dated 30 October 2024.

[5] As trustees of the G & J Whyte Trust.

[6] Dated 5 December 2024.

[7] Including appendices: A - NPDC Resource Consent Application Form; B – BOON Architectural Drawings for the as-built dwelling including shading diagrams; and C – Record of Title.

b. Various items relating to further information including: a request for further information from NPDC dated 4 July 2024, initial response e-mail from B Lawn, McKinlay Surveying dated 14 August 2024, e-mails seeking additional clarifications from NPDC dated 12 September 2024 and 7 October 2024, and respective responses from B Lawn, McKinlay Surveying dated 23 September 2024 and 7 October 2024.

c. The submission made on the application by Geoffrey and Johanna Whyte ("the Submitter") dated 4 December 2024 and attaching as an appendix the affidavit in support of an application to the Environment Court for enforcement orders by Mr Whyte dated 21 March 2024. That affidavit includes annexure GW1 comprising some 113 pages of: photographs of the neighbouring building development at various stages, architectural plans from Boon Architects, a ground level assessment provided to Boon Architects by BTW Company,[8] e-mail correspondence with NPDC,[9] permitted activity assessments prepared by Bland & Jackson Surveyors Ltd for NPDC,[10] letter from Pidgeon Judd to NPDC dated 18 March 2024 seeking that an abatement notice be issued for breaches of relevant height and height in relation to boundary standards. The affidavit also includes annexure GW-2 comprising a table setting out a chronological order of events.

d. A report on the Application and submission received prepared under section 42A of the RMA by Mr Campbell Robinson ("the s42A Report"),[11] Senior Planner (Consultant), for the Council. That report also contained the section 95A and 95B Notification and Limited Notification Assessment Report as an Appendix.[12]

e. Statements of Evidence ("SOE's") in support of the Application from Bryan Roach (applicant), Kyle Arnold (architecture), Jono Murdoch (architecture – shadow diagrams), Daniel McEwan (landscape architecture), Richard Bain (landscape architecture peer review), Alan Doy (surveying), and Ben Lawn (planning).[13]

f. SOE's on behalf of the submitter from Geoffrey Whyte (submitter), Emma McRae (landscape architecture), and Kathryn Hooper (planning).[14]

g. Legal submissions on behalf of the Applicant from Mr Scott Grieve dated 26 March 2025.

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8 Dated 12 December 2023.

9 From December 2023 – March 2024.

10 Dated 6 March 2024 and 19 March 2024 respectively.

11 Dated 4 March 2025.

12 Also prepared by Mr Robinson and dated 30 October 2024.

13 All dated 12 March 2025.

14 All dated 19 March 2025.

6. The s42A Report analysed the information received in relation to the Application along with the submission received, and following assessment under sections 104 and 104B of the RMA, recommended that consent be granted to the retrospective land use consent application subject to conditions.

7. The s42A Report was taken "as read" at the hearing, as were the statements of pre-exchanged expert evidence. Experts on behalf of the Applicant presented both supplementary evidence and a verbal summary of their pre-circulated evidence at the hearing, while experts on behalf of the submitter presented a verbal summary of their pre-circulated evidence.

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

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

10. At the end of proceedings, after hearing from the Applicant's legal counsel and witnesses, the submitter's legal counsel and witnesses, the s42A reporting officer, and closing verbal comments from the Applicant's counsel, the hearing was adjourned. The adjournment was made pending receipt of various matters[15] including a complying permitted baseline plan set, pergola design plans and Proposed New Plymouth District Plan ("PDP") compliance assessment of these plans, peer reviews of the PDP compliance assessments, and a written right of reply from the Applicant's legal counsel.

11. The permitted base line plan set, pergola design plans, and compliance assessment of those plans was provided by the Applicant's experts on Friday 11 April 2025. Respective peer reviews from Mr Robinson and Ms Hooper of the PDP assessments of those plans were provided on Wednesday 16 April 2025. After considering those peer reviews, both of which identified a breach of the PDP standards in the pergola design, I issued Post Hearing Minute 2 on 17 April 2025 requesting the Applicant provide an amended complying pergola plan and a PDP compliance assessment of it to be filed with the Applicant's Right of Reply by 28 April 2025 and invited an extension of time to be requested if necessary. Following receipt of a memorandum from the Applicant's Counsel seeking an extension of time until 9 May 2025, I issued Post Hearing Minute 3 granting that extension.[16]

12. The Applicant's Right of Reply contained four 3D model images[17] and was received on 9 May 2025. The Right of Reply was accompanied by an alternative planter design to the pergola and a PDP compliance assessment included within a supplementary SOE from Mr Lawn. The statement from Mr Lawn provided additional comments on the

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[15] As set out in a Post Hearing Directions Minute dated 28 March 2025.

[16] Dated 22 April 2025.

[17] Being screenshots from the dwelling model with recession planes shown by Mr Arnold at the hearing.

pergola plan and the alternative planter mitigation option. Mr Lawn provided further justification to why the pergola plan does comply with the PDP in his opinion. He also provided a PDP compliance assessment of the additional privacy mitigation of louvers on the eastern bay window, along with draft consent conditions covering different options dependent on a determination of whether the proposed pergola complies with the PDP and whether MRZ-S4 is applied.

13. Finally, the Right of Reply also attached a SOE from the Roach's builder, Mr Christopher Bell, dated 28 April 2025. That statement comments on the feasibility of moving or modifying the dwelling and provides an estimate of the demolition and rebuilding cost to achieve a dwelling that is fully compliant with the PDP.

14. On 12 May 2025 Mr Cameron submitted a *'Memorandum of Counsel for the Submitters' for* consideration. That memorandum referred to the Applicant's reply documents, and specifically the SOE from Mr Bell, and records the submitters objection to the admission of that evidence *"at this very late stage"*.

15. On 13 May 2025 I issued Post Hearing Minute 4 upholding that objection, on the grounds that accepting Mr Bell's evidence without providing an opportunity for the submitters to respond to it would not accord with the principles of natural justice. I determined that I had sufficient information to decide on the application without the admission of Mr Bell's evidence. I therefore recorded in Minute 4 that Mr Bell's evidence is to be disregarded.

16. Finally in Post Hearing Minute 4 I declared the hearing closed as of 13 May 2025.

1.4 SUMMARY OF EVIDENCE

17. 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 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.[18]

2. DESCRIPTION OF THE PROPOSAL & SITE

18. In summary, the proposal seeks retrospective land use consent for a second dwelling and associated retaining and fence structures on the front (or northern) boundary of the site. The second dwelling breaches the PDP height in relation to boundary standards, and the front retaining wall / fence breaches fence height standards.

[18] Bryan and Kim Roach & South Taranaki Trustees Limited

Proposed, but yet-to-be implemented privacy mitigation, includes a vertical louver screen across the eastern end of the first-floor front deck.

19. The proposal is described in further detail in the AEE,[19] and the s42A Report.[20]

20. The Site at 24 / 26 Woolcombe Terrace, New Plymouth[21] and its surrounds are described in the AEE (including photographs),[22] the s42A Report,[23] and the submitter's evidence.[24] In summary, the following are key descriptors of the Site and surrounds:

    a. The Site contains two existing dwellings including a recently built two-storied home located on the eastern side (number 26) and is comprised in one title with two allotments.[25]

    b. The Site is 904m^2 and flat in contour aside from the sloping entry, with an existing residential dwelling of approximately 240m^2 in size located on the western side of the site (24 Woolcombe Terrace). A second dwelling on the eastern side of the site (26 Woolcombe Terrace) was removed to allow for the construction of the subject dwelling. A shared vehicle access point provides access to both dwellings.[26]

    c. The Site is bound by residential properties to the south, east and west and to the north by the Woolcombe Terrace legal road. Beyond the roadway is the New Plymouth foreshore.[27]

    d. The foreshore land parcel includes common greenspace and planting at the top of the coastal escarpment as well as the New Plymouth coastal walkway located at the foot of the cliff immediately adjacent the foreshore.[28]

    e. Woolcombe Terrace is characterised by detached, one or two storied dwellings which face the street, taking advantage of sea views.[29] There are a range of building forms and architectural styles along the street, with many dwellings

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19 McKinlay Surveyors, 7 June 2024 (page 4).

20 Pages 2 – 3.

21 Legally described as Part Lot 1 DP 4522 and Part Lot 2 DP 5012 (Record of Title: 961499).

22 Pages 5 – 8.

23 Page 2 (paragraphs 10 – 12).

24 *Statement of Evidence of Emma McRae*, 19 March 2025 ("SOE of E McRae") (paragraphs 5.1 – 5.3).

25 S42A Report (paragraph 10) and AEE (page 5).

26 AEE (page 6).

27 S42A Report (paragraph 11).

28 S42A Report (paragraph 12).

29 I also note the AEE which includes a photograph of a three level residential dwelling to the east of the site on Woolcombe Terrace (Figure 3) and states that the character of the area is towards higher density development with the majority of buildings being two or three level residential dwellings (page 6).

sharing the typology of large front windows or balconies which face the street and the coastline. There is little vegetation present along the street front.[30]

3. RESOURCE CONSENT REQUIREMENTS AND ACTIVITY STATUS

21. The relevant district plan for assessing the status of the resource consent is the PDP as at the time that the application was lodged, June 2024, the PDP decisions on submissions had been made and the appeal period had expired. These decisions were publicly notified on 13 May 2023.

22. 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 Mr Robinson in the S42A Report[31] and need not be repeated here.

23. At the time of the hearing there was also agreement amongst the planning experts that the relevant district plan for assessing the application is the PDP (Appeals Version 7 updated on 23 December 2024).[32]

24. Under the PDP the Site is located within the Medium Density Residential Zone ("MRZ") and is within the Coastal Environment ("CE").[33]

25. I note that since the hearing held on 27 March 2025 there has been a further update to the PDP, with the current version now being 'Appeals Version 8 updated on 3 April 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 8. For completeness I note that based on Mr Robinson's advice,[34] there are no appeals relevant to the provisions of the relevant rules or effects standards of the MRZ. There are however amendments to the Coastal Environment Chapter of the PDP in Appeals Version 8, accordingly where I am referring to evidence regarding the provisions of that PDP chapter, I will cross check those provisions against the now current version of the PDP and take into account any changes in my decision.

26. The s42A Report sets out the relevant PDP rules for assessing the status of the land use consent application and identifies that resource consent is required under the following rules:[35]

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30 SOE of E McRae (paragraph 5.3).

31 S42A Report (paragraphs 21 – 23).

32 *Statement of Evidence of Benjamin Lawn*, 12 March 2025 ("SOE of B Lawn") (paragraph8.2), *Statement of Evidence of Kathryn Hooper,* 19 March 2025 ("SOE of K Hooper") (paragraph 24), and S42A Report (paragraph 19).

33 S42 Report (paragraph 18), SOE of B Lawn (paragraph 6.1), and SOE of K Hooper (paragraph 20).

34 S42A Report (paragraph 23).

35 S42A Report (paragraph 19, Table 2).

a. CE-R5 Building activities – Residential Zones – Discretionary Activity (as the proposal fails to meet the effects standards of the underlying MRZ).

b. MRZ-R1 Residential activities (excluding residential buildings) – Restricted Discretionary Activity (the proposal fails to comply with 2 separate effects standards).

c. MRZ-R31 Building activities – Restricted Discretionary Activity (the proposal fails to comply with 2 separate effects standards).

d. MRZ-R33 Building activities that do not comply with MRZ-S3 Height in Relation to Boundary but comply with MRZ-S4 Alternative Height in Relation to Boundary – Restricted Discretionary Activity (the dwelling does not comply with effects standard MRZ-S3 but complies with MRZ-S4).

27. Based on that assessment Mr Robinson concludes that overall, the proposal is a Discretionary Activity under Rule CE-R5 of the PDP being the highest activity status.[36] There is agreement amongst all three planning experts that the overall status is a Discretionary Activity under Rule CE-R5 of the PDP and that the effects standards of the MRZ that are breached are MRZ-S3 Height in Relation to Boundary ("HIRB") of the dwelling and MRZ-S10 Maximum fence or wall height of the front retaining wall and glass balustrade,[37] but there are however, differences in opinion between the experts as to the applicable rules of the MRZ.

28. Mr Lawn disagrees with Mr Robinson that MRZ-R1 is applicable because it only relates to residential activities as a land use and not to buildings. He supports his opinion with a quote from the PDP Independent Hearings Panel which states that the zone effects standards are irrelevant to the use of land (under R1) for residential activities (as opposed to buildings).[38]

29. Ms Hooper also disagrees with Mr Robinson that MRZ-R1 is applicable, and rather that MRZ-R4 'Up to three residential units per site' applies.[39] In his supplementary statement, Mr Lawn agrees with Ms Hooper that MRZ-R4 is applicable.[40] As I have recorded in Schedule 1 'Summary of Evidence' to this decision, Mr Robinson in his verbal statement at the conclusion of the hearing also agreed that MRZ-R4 applies. The remaining area of disagreement then on this matter, is that Mr Robinson considers that both rules MRZ-R1 and MRZ-R4 are applicable, while Mr Lawn and Ms Hooper consider that MRZ-R4 applies but MRZ-R1 does not. I find that this matter is of

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36 S42A Report (paragraph 20).

37 S42A Report (paragraph 19, Table 3), SOE of B Lawn (paragraphs 8.4 – 8.5, Table 1), SOE of K Hooper (paragraphs 25 & 31).

38 SOE of B Lawn (paragraphs 8.5 and 8.6).

39 SOE of K Hooper (paragraphs 26 – 28).

40 Supplementary Statement of Evidence of B Lawn ("SSE of B Lawn") (paragraph 3.1).

no consequence to my decision as either way the MRZ effects standards are triggered and there is agreement amongst the three planning experts that MRZ-R31 applies and that neither standard MRZ-S3 nor MRZ-S10 are met, therefore triggering Restricted Discretionary Activity resource consent.

30. A more material matter of disagreement is that both Mr Robinson and Mr Lawn consider that rule MRZ-R33 applies, and Ms Hooper considers that it does not.[41] The significance is that restricted discretionary rule MRZ-R33, which applies to buildings that don't comply with MRZ-S3 HIRB but do comply with MRZ-S4 Alternative Height in Relation to Boundary ("AHIRB"), has some differences in matters of discretion to MRZ-R31.[42] Further to this, activities that comply with MRZ-R33 and all other MRZ effects standards, are precluded from limited and public notification. Of course, that preclusion does not apply to this case as standard MRZ-S3 is breached by the rear of the subject building and MRZ-R10 is breached by the front retaining wall and fence structure.

31. Ms Hooper's opinion is that the AHIRB standard MRZ-S4 does not apply as the Applicant's building does not sit entirely within 20m of the site frontage, and that this standard does not apply to part of a building.[43] Ms Hooper refers to the PDP definition of 'Building Activities'[44] and to the Kāinga Ora evidence presented at the PDP hearings which promoted the use of the AHIRB standard.[45]

32. Mr Lawn points out that HIRB standard MRZ-S3 includes a list of circumstances when that standard does not apply, which includes *"9. Buildings or parts of buildings that utilise MRZ-S4 Alternative Height in Relation to Boundary standard."*[46] Mr Lawn also goes into the Kāinga Ora evidence presented at the PDP hearings including its reference to the Auckland Unitary Plan on which the AHIRB rule was based.[47]

33. Mr Lawn also advises that he requested information from NPDC as to resource consent applications that had utilised the AHIRB standard and that there were seven of these, five of which involved buildings that extended further than 20m from the site frontage. With a summary of these applications provided in Appendix 1 of his evidence, and an example of such an application and the NPDC report on it provided in Appendix 2.[48]

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41 SOE of K Hooper (paragraphs 30 and 32 – 45).

42 I note the different matters of discretions are set out in a table comparison format in Appendix 1 to Ms Hooper's SOE.

43 SOE of K Hooper (paragraph 37).

44 SOE of K Hooper (paragraphs 39 – 40).

45 SOE of K Hooper (paragraphs 38 and 41).

46 SOE of B Lawn (paragraph 8.16).

47 SOE of B Lawn (paragraph 8.18 – 8.20).

48 SOE of B Lawn (paragraphs 8.21 – 8.22).

34. While I agree that as raised by Ms Hooper, and Mr Cameron,[49] MRZ-S4 itself does not refer specifically to 'parts of buildings', I find Mr Lawn's evidence compelling that the exemptions referred to in MRZ-S3 include parts of buildings that utilize MRZ-S4. I also consider it significant that NPDC has been consistently administering the PDP that MRZ-S4 can be used for the front portion of buildings that extend beyond 20m from the site frontage. I therefore find that both rules MRZ-S31 and MRZ-S33 are applicable to this decision.

35. In summary then, I find that this land use consent application has the overall status of a discretionary activity under rule CE-R5, and that the following rules are also applicable, MRZ-R4, MRZ-R31 and MRZ-R33, each of which has a Restricted Discretionary Activity status.

36. The s42A Report states that there are no applicable National Environmental Standards to the Application.[50] There being no expert evidence to the contrary I also find this to be the case.

37. The Application is therefore to be assessed with an overall discretionary activity status.

4. RELEVANT STATUTORY REQUIREMENTS

38. Section 104(1) of the RMA sets out the mandatory matters to which I must have regard when considering the Application and submission 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.

39. 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.

40. As this case involves retrospective resource consent, the respective counsel for the Applicant and submitter have provided legal submissions on the principles applying to retrospective applications for resource consent.

41. Mr Grieve in his legal submissions on behalf of the Applicant sets out the limited circumstances where the RMA addresses retrospective consenting (which do not apply to this case) including a s330 Emergency Works case (*Harris v Bay of Plenty*

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[49] *Legal Submissions on Behalf of Geoffrey & Johanna Whyte*, dated 27 March 2025 ("Legal Submissions for the Submitters") (paragraphs 3.16 – 3.20).

[50] S42A Report (paragraph 17).

Regional Council EnvC W72/2008),[51] sets out the circumstances of this case[52] and cites various cases of where retrospective resource consents have been subject to court decisions.[53] Mr Grieve then comments on prior conduct and proportionality citing *Hinsen v Queenstown-Lakes District Council* [2004] NZRMA 115 and submitting that the Roach's situation differs in arising from a genuine mistake and that the cost of adjusting the building to make it comply would be out of proportion to the effects caused by the non-complying elements.[54] Finally on this subject Mr Grieve refers to proportionality having regard to enforcement cases and submits that enforcement orders would unlikely be made when effects are de minimus.[55]

42. Mr Cameron submits that if an existing activity does not have the necessary consent, it should not be given any de facto advantage because of that fact,[56] and there should be no presumption that what exists should remain, simply because it would be difficult or expensive to remove it.[57] Mr Cameron also cites from *Strata Title "that the application must be considered as a greenfields proposal, which stands or falls on its merits when assessed against the relevant statutory and planning provisions."* [58]

43. Mr Cameron disagrees with Mr Grieve's use of *Hinsen* to distinguish the Application from *Strata Title* and states that the *Hinsen* decision is consistent with *Strata Title*.[59]

44. Mr Grieve in the Applicant's Right of Reply submits that the Environment Court ultimately took account of proportionality in deciding to grant retrospective consent in *Hinsen* in citing paragraph 130 of that decision.[60] Mr Grieve submits that I am bound to follow the Court's approach in *Hinsen "and take into account the extent to which the cost of complying would be disproportionate to the benefit of doing so, and so would become a penalty."*[61]

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[51] *Outline of Submissions on Behalf of the Applicant Bryan & Kim Roach & South Taranaki Trustees Ltd (Roach),* dated 26 March 2025 ("Legal Submissions for the Applicant") (paragraphs 24 & 25).

[52] Legal Submissions for the Applicant (paragraphs 26 & 27).

[53] Legal Submissions for the Applicant (paragraphs 28 – 33).

[54] Legal Submissions for the Applicant (paragraphs 34 – 38).

[55] Citing *Hill Park Residents Association Inc v Auckland Regional Council* EnvC A30/2003, Legal Submissions for the Applicant (paragraphs 39 – 40).

[56] Citing *Strata Title Admin Body Corporate 176156 v Auckland Council* [2015] NZEnvC 125, Legal Submissions for the Submitters (paragraph 3.2).

[57] Citing *NZ Kennel Club Inc v Papakura District Council* W100/2005, Legal Submissions for the Submitters (paragraph 3.3).

[58] Citing Strata Title as above in 55, Legal Submissions for the Submitters (paragraph 3.3).

[59] Legal Submissions for the Submitters (paragraphs 3.5 – 3.7).

[60] Right of Reply for the Applicant Bryan & Kim Roach & South Taranaki Trustees Limited (Roach) ("Reply submissions") (paragraphs 14 – 16).

[61] Right of Reply for the Applicant (paragraph 16).

45. In his reply Mr Grieve goes onto quantify the costs of compliance relying on the evidence of Mr Bell. As stated above, I have disregarded Mr Bell's evidence and accordingly also disregard paragraph 18 of Mr Grieve's reply but in doing so note that it is self-evident that the cost of altering the building to comply with MRZ-S3 would be reasonably significant.

46. Having carefully considered the legal submissions of Mr Grieve and Mr Cameron on the principles applying to retrospective resource consents I find that in the first instance I should assess the application on its merits under sections 104 and 104B of the RMA as if the building were proposed, rather than built. If I were to find that at least some part of the building needed adjusting to be more, or fully, compliant, or that the application should be declined, in appropriately avoiding, remedying or mitigating adverse effects, then I should consider the principle of 'proportionality'.

47. Mr Cameron raises the matter of the past conduct of the Applicant in his Legal Submissions for the Submitters,[62] and states that there has been disregard for the rules of the PDP by the Applicant and their consultants. Having also reviewed the evidence of Mr Roach and Mr Arnold and the legal submissions of Mr Grieve I find that while the outcome has been a breach of the PDP standards (and I do not belittle the impact of that from the Whyte's perspective), that breach has not been deliberate with the building design being based on the ODP which was in effect at that time, and that the breach of the standards (of the ODP initially and the PDP by the time the resource consent application was lodged) also resulted from a ground level surveying error. In these circumstances I do not consider 'prior conduct' to be a relevant issue in exercising my discretion under sections 104 and 104B of the RMA.

5. CONSIDERATION OF THE PRINCIPAL ISSUES IN CONTENTION

5.1 ASSESSMENT OF EFFECTS ON THE ENVIRONMENT

48. 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).

49. The S42A Report helpfully categorises the relevant effects to be had regard to. I set out these effects categories under the subheadings below and consider the evidence received, and points raised in the submission regarding each effect.

50. Prior to undertaking that exercise however and having determined that standard MRZ-S4 and rule MRZ-S33 apply, I have considered the relevant PDP assessment criteria that apply in informing my consideration of effects under s104(1)(a) of the RMA. In

[62] Legal Submissions for the Submitters (paragraphs 3.12 – 3.15).

doing so I note that Ms Hooper's evidence helpfully appends a table setting out the applicable PDP assessment criteria.[63]

51. Rule MRZ-R33 includes additional matters to those listed against standards MRZ-S3 and MRZ-S10 including details of acceptable sunlight access and overlooking and privacy. In terms of the latter, matter (3) states: *"the extent to which direct overlooking of a neighbour's habitable room windows and outdoor living space is minimised to maintain a reasonable standard of privacy, including through the design and location of habitable room windows, balconies or terraces, setbacks, or screening."*

5.1.1 Effects on Streetscape and Coastal Environment

52. The S42A Report does not provide any additional assessment of streetscape and coastal environment effects to the Notification Report, for the reason that: *"Given no further submitter evidence has been presented regarding either matter, I maintain my view that effects are minor and ultimately acceptable."*[64]

53. The submitter, Mr Whyte in his hearing statement, disagrees with Mr Robinson's comments on streetscape character at paragraphs 85 and 87 of the S42A Report, which refer to the effects of streetscape being compatible with the character of the area in the context of the MRZ objectives. Mr Whyte refers to the surrounding area being dominated by flat roof designs as shown in Ms McRae's evidence.[65]

54. Ms McRae's assessment of the effects of the front wall / fence infringement and on streetscape character are that the adverse effects are "very low adverse."[66] Ms Hooper also agrees that the activity has negligible effect on streetscape stating: *"Effects on wider streetscape have been considered by the experts they agree that these effects are negligible."*[67]

55. In terms of the coastal environment Mr Robinson, Mr Lawn and Ms McRae are in agreement that the effects on the coastal environment, which is heavily modified in the area surrounding the site, are less than minor.[68] Ms Hooper does not comment on the potential effects on the coastal environment but does state her agreement with Mr Robinson and Mr Lawn that the proposed activity is consistent with the New Zealand Coastal Policy Statement ("NZCPS") and the coastal environment objectives and policies in the PDP.[69]

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63 SOE of K Hooper (Appendix 1).

64 S42A Report (paragraph 33).

65 Hearing Statement of Geoffrey Whyte ("Statement of G Whyte") (paragraph 5.12).

66 SOE of E McRae (paragraphs 11.1 and 13.16).

67 SOE of K Hooper (paragraph 73).

68 S42A Report (paragraph 33), SOE of B Lawn (paragraphs 9.32 – 9.33), SOE of E McRae (paragraph 14.1).

69 SOE of K Hooper (paragraph 88).

56. Given the above, I find that there is no contest of expert evidence on the effects of the proposal on streetscape and the coastal environment, and that such effects are no more than minor, and acceptable.

Shading Effects on Submitter

57. There is also agreement amongst the experts that the effects of shading on the submitter are no more than minor, which I will return to. I note however that Mr Whyte is very clear in his statement that he remains *"concerned by the degree of shading and ensuring the appropriate comparison with a building which could be constructed 'as of right' on the neighbouring property."*[70] Mr Whyte also explains in his statement how the area to the rear of their property, which will be subject to some shading effects from the Roach's dwelling, is utilised for outdoor living and as a play area for his grandchildren at different times, and is not simply a vehicle storage and manoeuvring area.[71]

58. The AEE, further information responses, and architectural evidence of Mr Murdoch[72] in particular, and Mr Arnold[73] spent considerable time assessing the effects of shading of the as built dwelling on the Whyte's property, and in particular a comparison of such effects with what would be a permitted activity under the PDP (i.e. 'the permitted baseline').

59. The S42A Report considers the shading effects to be *"less than minor and ultimately acceptable,"*[74] which Mr Lawn agrees with.[75] Ms McRae states that she agrees with the landscape architects for the Applicant, Mr McEwan and Mr Bain that the shading effects are low adverse given the level of shading that could occur from a fully compliant 11m high building.[76] Relying on Ms McRae's evidence Ms Hooper concludes that *"the shading effects are likely to be within or close to the effects associated with the permitted baseline and therefore acceptable."*[77]

60. Given the above, all the expert evidence agrees that the potential adverse shading effects from the as built dwelling is no more than minor and acceptable, given the

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70 Statement of G Whyte (paragraph 5.8).

71 Statement of G Whyte (paragraphs 3.3 – 3.7, & 5.7).

72 Statement of Evidence of Jonathan Murdoch ("SOE of J Murdoch) (paragraphs 6.1 – 10.4).

73 SOE of K Arnold (paragraphs 7.3 – 7.4)

74 S42A Report (paragraph 40).

75 SOE of B Lawn (paragraph 9.20).

76 SOE of E McRae (paragraph 8.7),

77 SOE of K Hooper (paragraph 72).

permitted baseline of the PDP. With no expert evidence to the contrary, I also find this to be the case.

Privacy Effects on Submitter

61. Effects on the submitter's privacy from the as built dwelling are contested by both the submitter and their experts. On this matter Mr Robinson considers the tinting of the infringed windows, and the views that could be obtained from them, as well as the proposed vertical louver screen to be placed on the eastern end of the first-floor deck,[78] prior to stating that *"adverse privacy effects are considered to be less than minor and acceptable."*[79]

62. In addition to the infringed windows commented on by Mr Robinson, Ms McRae points out that there is also overlooking from large windows in the centre of the eastern façade towards the Whyte's property as well as from the ground floor level outdoor deck area. Ms McRae states that from this deck area 7 habitable room windows of the Whyte's dwelling can be directly viewed, and that the rear first-floor deck also overlooks the rear of the Whyte's section. Ms McRae concludes that without mitigation the effects in relation to privacy and overlooking are low-moderate adverse.[80]

63. Ms Hooper adopts Ms McRae's conclusions on privacy and overlooking and states that the Applicant's vertical louver mitigation on the front deck will not address the privacy effects on the habitable rooms on the western side of the Whyte's dwelling, nor their rear yard outdoor living area. Ms Hooper goes on to state that the building dominance and privacy effects on the owners and occupiers of 28 Woolcombe Terrace, in the absence of appropriate mitigation, are unacceptable.[81]

64. Mr Arnold sets out the aspects of the architectural design intended to reduce privacy effects, these being: the proposed vertical louvers at the front upper level balcony; window orientation, location, size, and dark tinted glass; two triangle pop out windows to provide views of the sea from further back in the house and to ensure they did not overlook directly to the Whyte's; and larger glazing sections were deliberately set back from adjacent boundaries and positioned in circulation areas only to provide good natural lighting but not in locations where the residents would typically dwell for longer periods of time to mitigate any privacy concerns.[82]

65. Mr McEwan reiterates some of these points in stating his opinion that the dwelling has been designed in a way that minimises potential effects on privacy, noting the larger

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78 For which he recommends a condition of consent to ensure implementation.

79 S42A Report (paragraphs 41 – 44).

80 SOE of E McRae (paragraphs 8.9 – 8.10).

81 SOE of K Hooper (paragraphs 74 – 79).

82 SOE of K Arnold (paragraphs 4.10 – 4.13).

east facing windows are in passageways not lending themselves to static viewing. He considers that any potential adverse effects on privacy are to an acceptable level and align with the MRZ effects standards.[83]

66. Mr Bain agrees with Mr McEwan and states: *"It is unlikely that the constructed dwelling creates a loss of privacy for the submitters as the main activities (living, kitchen) … primarily face north and west."*[84] He also points out that the constructed dwelling creates no additional loss of privacy, as the height to boundary breach areas do not include any windows other than a small slither of the window at the northern end.[85] Mr Lawn quantifies the extent of the MRS-S3 HIRB breach as being 0.6m and states that if the windows were 0.6m lower he would not expect any difference in privacy effects.[86]

67. Mr Lawn notes in his supplementary evidence that Ms McRae bases her assessment of privacy impacts on the front and rear decks, the eastern deck and the windows from the passageway and states that these are all compliant aspects of the building which are able to be achieved without infringement of MRZ-S3.[87] Mr Lawn goes onto point out that in the context of the PDP, the level of privacy and overlooking is provided for.[88] I agree with the points made by Mr Lawn and Mr Bain on this matter.

68. I find that a building could be established at the same distance from the boundary with a similar window and deck configuration on its eastern elevation to the as built dwelling (I say similar as the windows and decks could be in the same position but slightly lower as part of a building achieving overall compliance with the PDP). As such, I find that adverse privacy effects resulting from the window and deck locations are effects permitted by the District Plan and are appropriate for me to disregard under section 104(2) of the RMA. In this context, and considering the conditions offered for vertical louvers at the eastern end of the front deck and over the main living area window, and for planter screening on the middle deck, I generally agree with the conclusion of Mr Robinson and the Applicant's experts in finding privacy effects to be no more than minor.

69. In saying this I acknowledge that what may be considered minor or less than minor adverse effects on privacy in RMA planning terms, due to the extent of such effects permitted by the PDP in the MRZ, may be perceived as significant by Mr & Mrs Whyte.

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83 SOE of D McEwan (paragraph 9.4

84 Statement of Evidence of Richard Bain ("SOE of R Bain") (paragraph 8.8).

85 SOE of R Bain (paragraph 8.9).

86 SOE of B Lawn (paragraph 9.23).

87 Supplementary Statement of Evidence of B Lawn (paragraph 2.12) ("SSE of B Lawn")

88 SSE of B Lawn (paragraph 2.14).

70. I also find that the mitigation options offered at, and post, the hearing, would appropriately reduce privacy effects in reaching my conclusion that such effects will not be significant.

Building Dominance / Outlook / Sense of Enclosure Effects on Submitter

71. Mr Robinson describes the effects that he assesses under this heading as being the sense of building enclosure or the sense of a building being too close or being overbearing. He states building dominance can contribute to a feeling of a lack of visual or built relief between buildings impacting on the sense of outlook or amenity.[89] Due to the length of the HIRB infringement at 21.9m being 75% of the building length Mr Robinson considered it would create a sense of being dominated or enclosed on the Whyte property to the extent of being at least minor effects in meeting the limited notification threshold.[90]

72. Mr Whyte makes it clear in his statement that he and Mrs Whyte are "*extremely concerned about the effects that the large overbearing and visually dominant property will have on our residential amenity, our sense of privacy, and our enjoyment of our property."*[91]

73. It is those type of effects that Ms McRae is most concerned with in her assessment stating: "*The greatest effects on amenity in relation to 28 Woolcombe Terrace are in relation to 'sense of enclosure'.*[92] Ms McRae notes that a complying building of the same design would have to be set back further from the side boundary reducing the sense of overlooking and enclosure that the as-built dwelling creates, before concluding that the sense of enclosure effect is 'low-moderate adverse'.[93]

74. Ms Hooper references that part of Ms McRae's evidence before concluding that in the absence of appropriate mitigation, these effects are not acceptable.[94]

75. Mr Bain has a different opinion in stating: *"Based on my site visit, I agree that the building's form creates a lesser effect than those potential effects from a building that complies with the permitted building standards. In my view, the building's 'height to boundary' breaches create a minimal additional sense of enclosure and or dominance. This is primarily due to the small scale and extent of the breaches in the context of the building's eastern façade. I viewed the breach areas from several positions when visiting the Whyte property. Photographs of from (sic) these*

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89 S42A Report (paragraph 45).

90 S42A Report (paragraph 46).

91 Statement of G Whyte (paragraph 6.4).

92 SOE of E McRae (paragraph 8.11).

93 SOE of E McRae (paragraph 8.12).

94 SOE of K Hooper (Paragraph 79).

viewpoints are appended to this evidence. From these viewpoints, while the breach areas are identifiable, in my view they contribute little additional enclosure and/or dominance over and above if the breach areas were not there. The constructed dwelling at 26 Woolcombe Terrace is substantial and visually dominates the western flank of the submitters' property. However, this dominance is created primarily by the compliant parts of the dwelling."[95]

67 At this point I find it necessary to draw a conclusion on whether there is a permitted baseline that would result in similar, or greater building dominance effects than the as built dwelling. During the hearing doubt was raised by the submitter's witnesses as to whether the permitted baseline model presented by Mr Arnold was fully compliant with the PDP. I therefore directed at the adjournment of the hearing for a plan set of that model to be prepared and assessed for compliance against the PDP with that assessment to be peer reviewed by Mr Robinson and Ms Hooper. That exercise resulted in agreement that the 3-storey model with a maximum height of 11m and the ground floor situated a similar distance from the eastern boundary than the as built dwelling, would comply with the PDP.

76. I therefore find that the permitted baseline model presented by Mr Arnold is compliant with the PDP. I also find it to be non-fanciful and credible and in accordance with the various legal tests applied by the Courts, as set out in Mr Grieve's opening submissions on behalf of the Applicant.[96] In reaching this conclusion I have also considered Mr Cameron's submissions that the roofline of the permitted baseline model is fanciful.[97] I am satisfied that it is not fanciful based on review of the Boon Architects plan set provided of the permitted baseline model which includes coherent building floor plans and of the examples of similar asymmetrical roof designs in existing buildings provided In the supplementary statement of Mr McEwan.[98]

77. In addition to the permitted baseline model, I consider it necessary to also quantify the extent of the breach of PDP standard MRZ-S3. As mentioned, Mr Robinson estimates the breach at 21.9m in length being 75% of the total building length.[99] Ms McRae's calculations are in general agreement with this by breaking the length down to the front 14.663m and rear 7.863m of the building (being 22.56m in total).[100] Mr Lawn is also in agreement with Ms McRae that the total length of the breach is 22.56m.[101]

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95 SOE of R Bain (paragraph 8.5).

96 Opening Submissions for the Applicant (paragraphs 61 - 69).

97 Legal Submissions on Behalf of G & J Whyte, dated 27 March 2025 (paragraph 3.11).

98 Supplementary Statement of Evidence of D McEwan (Figures 2 & 3) ("SSE of D McEwan")

99 S42A Report (page 46).

100 SOE of E McRae (paragraphs 8.1).

101 SOE of B Lawn (paragraph 9.11).

78. There was some contention around the vertical height of the breach at the hearing with Ms McRae's evidence providing figures of 2m closest to the road to 1m at the southern extent of that section of breach with the rear section ranging from 1.505m to 0.668m.[102] This contrasts with Mr Lawn who states that the maximum breach of the front section of the building is 0.56m high,[103] which is consistent with Mr Murdoch's statement of evidence.[104] Mr McEwan sets out in his supplementary statement that the vertical height of the breach needs to be considered from the point of intersection with the recession plane and with reference to a diagram calculates this to be 0.725m at its highest point.[105] Based on the diagrammatic information provided by Mr McEwan, and questioning of the witnesses at the hearing, I prefer the approach of Mr McEwan which takes into account the three dimensional nature of the required recession plane and which measures the breach at its maximum extent. I therefore determine the maximum extent of the breach at the front end of the building to be 0.725m above the permitted recession plane of MRZ-S3.

79. I am cognisant of the concerns raised by Mr and Mrs Whyte, and their witnesses and counsel regarding the domineering nature of the Roach's building as experienced from their property. When considering building dominance and sense of enclosure in my decision however, it is relevant that such effects are permitted by the PDP up to the level of the breach, being between 0.725m and 0.291m lower than the eastern extent of the roof of the as built dwelling. I also find it relevant that the as built dwelling is compliant with the PDP for the upper portion and majority of its roof line which according to Mr Arnold reaches a maximum height of 9.25m at the north ridge roof flashing.[106] The permitted baseline model would result in an 11m high building, albeit that the ridge of the roof would be set back slightly further from the boundary.

80. Having made these determinations I prefer the evidence of Mr McEwan and Mr Bain over that of Ms McRae and their respective conclusions that the effect of the breached portions of the as-built dwelling on sense of enclosure and dominance are 'low',[107] and the proposal at worst creates low adverse effects.[108]

81. For completeness, under this heading I note that effects of reduced outlook from the submitter's property have also been considered. A concern of Mr & Mrs Whyte

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[102] SOE of E McRae (paragraphs 8.1, 8.12, 13.10 & 13.14).

[103] SOE of B Lawn (paragraph 9.11).

[104] SOE of J Murdoch (paragraph 7.1(a)(iii). Also shown on Drawing SK1.0 of Appendix 1 of SOE of J Murdoch noting the cross section showing the 0.56 height of the breach is positioned further back on the building than the maximum extent of the breach.

[105] SSE of D McEwan (paragraph 2.2 and Figure 1).

[106] SOE of K Arnold (paragraph 7.1).

[107] SSE of D McEwan (paragraph 3.1).

[108] SSE of R Bain (paragraph 3.1).

included an obstruction in views from the Roach's front fence and the effect that the rear of the Roach's dwelling has on blocking views of Taranaki Maunga. I observed the obstruction in views to Mt Taranaki from the rear deck of the Whyte's property on my site visit.

82. The submitter's experts, Ms McRae and Ms Hooper do not consider the effects of reduced outlook to be significant in an RMA sense, with Ms Hooper stating: *"Compared to the permitted baseline, I consider the effects on the outlook from the submitters' property would be negligible."*[109] I agree with Ms Hooper and the witnesses for the Applicant on this matter, and need not consider it any further.

Planned Character and Changes to Amenity in the MRZ

83. Mr Robinson observes that the MRZ of the PDP deliberately uses the term 'planned character' rather than 'existing character' in allowing for character and amenity levels to change over time. He states that this is consistent with PDP strategic objective UDF-18(9) which acknowledges change to increase housing densities may detract from amenity values appreciated by existing communities.[110]

84. Mr Robinson then sets out extracts from the overview section of the MRZ Chapter that reference its purpose and intended character, which includes providing for medium density residential development up to three stories high.[111] Ms Hooper sets out the MRZ overview section in full, the third paragraph of which refers to ensuring that high standards of on-site amenity are achieved, including by requiring that residential properties are provided with good access to sunlight and daylight and have reasonable levels of privacy. It also refers to provisions requiring that site design and layout be considered in order to protect and enhance the amenity of the surrounding properties and the wider neighbourhood.[112]

85. I find it relevant that the MRZ overview also sets out that in providing for residential intensification the MRZ provides for the most infill development potential in the District and that: *"The amount of development that can be undertaken as a permitted activity, and the Effects Standards for such development, are the key differences with the… General Residential Zone."*[113]

86. Mr Robinson goes onto conclude that larger scale and bulkier dwellings are generally consistent with the planned character of the MRZ subject to them meeting the effects standards, and that *"the PDP also makes it clear that negative changes in amenity*

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

[110] S42A Report (paragraphs 48 – 49).

[111] S42A Report (paragraphs 50).

[112] SOE of K Hooper (paragraph 95).

[113] Ibid.

views may be created as a result of changes to urban environments. This is not to say that significant adverse changes to existing amenity levels is consistent with the direction of the PDP. In this instance, I have deemed the effects to be minor and at the lower end of magnitude which is consistent with the direction of UDF-18(9)."[114]

87. After completing an assessment of the objectives and policies of the MRZ, Ms Hooper states that she disagrees with the above conclusion of Mr Robinson. Her view is: *"that the proposal is inconsistent with those that relate to providing for amenity of neighbouring properties. It is therefore not consistent with the planned character of the MRZ."*[115] I return to the proposals overall consistency with the MRZ objectives and policies below.

88. On the matter of 'planned character' I agree with Mr Robinson's considered conclusion. I am therefore satisfied that the MRZ overview statement indicates that the zone provides for higher residential densities and building scale in implementing strategic objective UDF- 18(9). As set out above the MRZ overview still considers the amenity of surrounding properties but it is in the context of an expected change in character.

Mitigation

89. The S42A Report is outdated in its comments on mitigation as the Applicant has offered additional mitigation measures at the hearing and through their Right of Reply.[116]

90. I find however that the observations made by Mr Robinson are helpful, including that:

    a. Any screening or fencing would also need to comply with effects standards including MRZ-S10 (boundary fencing).

    b. The use of large planter boxes or vegetative screening would need to be carefully considered in terms of their effectiveness and would require the advice of a landscape professional.

    c. Requiring physical demolition of part of the building to reduce effects, whilst possible, would be disproportionate in terms of the level of effect being caused.

91. I am reminded by Mr Grieve in the Applicant's Right of Reply that adverse effects on the environment must be considered having regard to their mitigated version, also taking into account proposed conditions of consent.[117] The mitigation measures

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[114] S42A Report (paragraph 51).

[115] SOE of K Hooper (paragraph 103).

[116] S42A Report (paragraphs 53 – 55).

[117] Right of Reply for the Applicant (paragraph 43, citing *Guardians of Paku Bay Association Inc v Waikato Regional Council [2012] 1 NZLR 271 (HC), at [29].*

offered by the applicant in the form of conditions at the close of the hearing are summarised as follows:

a. Installation of the vertical louvers at:

   i the eastern edge of the first-floor balcony and

   ii the eastern bay window

   shall be completed within 40 working days from the commencement of this consent.

b. Installation of the proposed planter pots and trees on the eastern ground level deck shall be completed within 20 working days from the commencement of this consent. The proposed planter pots and trees shall have a combined height of a minimum of 1.6m.

c. Any planting that fails must be replaced at the expense of the consent holder within the next planting season (May to September). All plantings must continue to be maintained by the consent holder.

d. Construction noise from all remaining works shall comply with the relevant standards outlined under Rule NOISE-7 NZS6803:1999 requiring the noise generated complies with the noise limits set out in Tables 2 and 3 of NZS 6803:1999 Acoustics Construction Noise, with reference to 'construction noise' taken to refer to mobile noise sources.

92. The submitter's experts also commented on mitigation with Ms McRae setting out the following options to avoid, remedy or mitigate adverse effects:[118]

a. Redesign of building's eastern façade further away from boundary so it does not exceed HIRB envelope.

b. Reduction in height / angle of roof plane so it does not exceed HIRB envelope.

c. Installation of louvers / window tinting in appropriate locations to reduce overlooking and increase privacy.

d. Introduction of planting / planter boxes to soften the transition between properties and reduce overlooking / privacy effects from the eastern deck.

e. Increased permeability in materials of the boundary fence to remove tunnelling effect and allow increased sunlight into undercroft space.

93. While options (a) and (b) as listed above may have the effect of avoiding and remedying adverse effects, I do not find them to be valid mitigation options for this proposal. What has been applied for is to breach the HIRB standard MRZ-S3.

[118] SOE of E McRae (paragraphs 12.2 & 15.4).

Requiring either of those options as a condition would achieve compliance with standard MRZ-S3 which would likely be the same outcome as declining consent[119] (if subsequent enforcement proceedings resulted in building demolition and reconstruction to achieve compliance). It would also mean it would be necessary for me to find that any adverse effect beyond those permitted by standard MRZ-S3 are unacceptable. I therefore reserve judgement on the appropriateness of Ms McRae's options (a) and (b) to my overall decision on this application.

94. Ms McRae's option (c) has been largely agreed by the Applicant. As Mr Arnold sets out in his evidence the windows are already dark tinted.[120] The conditions offered by the Applicant now include vertical louvers at the eastern end of the first-floor balcony and over the eastern bay window (the first-floor window in the main living area).

95. Similarly, Ms McRae's option (d) has been agreed to by the Applicant with the planter pot and 1.6m high trees, based on plans prepared by Mc McEwan, offered as a condition for screening from the eastern deck.

96. Ms McRae's option (d) relates to the boundary fence which complies with the PDP. As the overall activity status is discretionary a condition requiring mitigation works on an otherwise complying part of the proposal could be set if deemed necessary for mitigating relevant effects. Requiring the planter pot screening of the eastern deck is an example of this as a way of reducing the overall privacy effects. While Ms McRae's option (d) may increase sunlight to the Whyte's property it would have a negative effect regarding privacy and has not been included in the conditions offered in the Applicants reply. Noting the experts' agreement that the shading effects of the as built dwelling are minor, I do not find Ms McRae's option (d) to be an appropriate mitigation option.

Earthworks

97. On the matter of earthworks, Mr Robinson advises that the submission raised concerns regarding compliance with PDP rules EW-R10 (Earthworks for building activities) and CE-R1 (Earthworks (excluding network utilities)).[121] After considering the timing of the earthworks in question being prior to the PDP having legal effect, Mr Robinson concludes that land use consent was not required.[122] Mr Lawn assesses that the earthworks achieved compliance with the Operative District Plan.[123] Ms Hooper

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[119] Accepting that resource consent would still be required for the breach of MRZ-S10 for the front retaining wall and glass balustrade.

[120] SOE of K Arnold (paragraph 4.11) and SSE of K Arnold (paragraph 2.4).

[121] S42A Report (paragraph 57).

[122] S42A Report (paragraphs 58 - 60).

[123] SOE of B Lawn (paragraph 9.34(a)).

agrees with the assessments of both Mr Robinson and Mr Lawn.[124] There being no evidence to the contrary, I find that compliance of the proposal with PDP rules EW-R10 and CE-R1 is not relevant to this decision.

Positive Effects

98. The S42A Report does not consider positive effects; however Mr Lawn identifies such effects in his SOE.[125] Although there will be positive effects for the Applicant, I do not find those effects to be particularly relevant to my decision given the retrospective nature of this application.

Effects Conclusion

99. Mr Grieve has made comprehensive legal submissions on the consideration of effects both in his Legal Submissions for the Applicant[126] and Reply Submissions[127] which I have carefully considered.

100. In summary there is no contest amongst the experts who agree that the potential effects discussed under the following headings are minor or less than minor and therefore not significant in the context of section 104(1)(a) of the RMA: streetscape and coastal, shading, outlook, and earthworks.

101. There is a contest amongst the experts as to the degree of effects that the as built dwelling has in terms of privacy, building dominance and sense of enclosure. I have carefully considered the views of the submitter, and the expert evidence and legal submissions presented on these matters. Having regard to the AHIRB rule, the offered mitigation conditions and the credible and non-fanciful permitted baseline building model, I find that these effects are no more than minor and would not in themselves prevent me from allowing the activity with regard to section 104(1)(a) of the RMA.

102. In drawing that conclusion, I also find it significant that the MRZ is planned to have a changing character resulting from increased residential density and building scale under the PDP compared to its existing state.

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[124] SOE of K Hooper (paragraph 114).

[125] SOE of B Lawn (paragraph 9.36).

[126] Legal Submissions for the Applicant (paragraphs 5 -19).

[127] Reply Submissions (paragraphs 3 – 11).

6. STATUTORY INSTRUMENTS

6.1 PROPOSED NEW PLYMOUTH DISTRICT PLAN

103. The relevant provisions of the PDP require consideration under s104(1)(b)(vi) of the RMA.[128]

104. The s42A Report provides a comprehensive assessment of the relevant objectives and policies of the following PDP Chapters: Strategic Direction – Urban Form and Development (UFD), Medium Density Residential Zone (MRZ), and Coastal Environment (CE).[129] Mr Robinson does not identify any inconsistency of the proposal with UDF-18,[130] he then goes onto complete a point by point assessment of the MRZ objectives and policies and again does not identify any areas of inconsistency of the as built dwelling with those provisions, informed by his assessment of effects.[131] Finally Mr Robinson assesses the relevant CE objectives and policies and concludes that the development is consistent with them.[132] I have reviewed the CE provisions in PDP Version 8 and those objectives and policies reviewed by Mr Robinson remain generally unchanged (from PDP Version 7 which applied at the time of Mr Robinson's assessment).

105. Mr Lawn sets out in a table format what he considers to be the relevant UDF strategic objectives and the relevant objectives and policies of the MRZ and follows each table with his assessment of the as built dwelling. Mr Lawn concludes that the dwelling achieves consistency with relevant aspects of UDF-18, UDF-20 and UDF-24[133] and that it *"is complementary to the MRZ and existing / planned character of this location."*[134] He then makes the overall conclusion that the proposal is not contrary to, and consistent with, the relevant objectives and policies of the PDP.

106. Ms Hooper agrees with Mr Lawn as to the relevant UDF strategic objectives, but considers that the dwelling and site could have been better designed to mitigate effects on the neighbouring property and while still achieving all the benefits detailed by Mr Lawn.[135] Ms Hooper then goes onto provide an assessment of the as built dwelling against relevant MRZ objectives and policies concluding that the proposal is

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[128] 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 23), SOE of B Lawn (paragraphs 8.1 & 10.4), and SOE of K Hooper (paragraph 24).

[129] S42A Report (paragraphs 74 – 103).

[130] S42A Report (paragraphs 75 – 83).

[131] S42A Report (paragraphs 84 – 102).

[132] S42A Report (paragraph 103).

[133] SOE of B Lawn (paragraphs 10.5 – 10.8).

[134] SOE of B Lawn (paragraph 10.12).

[135] SOE of K Hooper (paragraphs 93 & 94).

inconsistent with those that relate to providing for amenity of neighbouring properties.[136]

107. Ms Hooper provides her opinion that the MRZ contains a generous permitted activity envelope.[137] She goes onto state that the AHIRB rule enables exceedance of the permitted activity rule provided the development is done well by identifying effects at the design stage and adopting mechanisms to ensure effects are appropriately avoided, remedied and mitigated,[138] and ultimately concludes that the application does not achieve this.[139]

108. 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 generally agree with the assessments and conclusions of Mr Robinson and Mr Lawn and find that the as built dwelling with the proposed mitigation conditions, will achieve general consistency with objectives UFD-18, 20 and 24 and the relevant objectives and policies of the MRZ and CE Chapters.

6.2 NATIONAL POLICY STATEMENTS

109. Under s104(1)(b)(iii) I am required to have regard to any relevant national policy statements. Mr Robinson considers the National Policy Statement on Urban Development 2020 (updated 2022) ("NPS-UD") to be relevant, and he sets out objectives 1, 4, & 5 and policies 1 and 6 of the NPS-UD alongside those UFD strategic objectives that relate to each of those provisions. He concludes that the proposal is generally consistent with the relevant objectives and policies of the NPS-UD as it provides for urban environments and amenity to change over time to provide for well-functioning environments.[140]

110. Mr Lawn agrees with Mr Robinson's assessment[141] as does Ms Hooper.[142]

111. There being no evidence to the contrary I find that the as built dwelling achieves general consistency with the NPS-UD.

112. Ms Hooper also notes that the proposal is also consistent with the New Zealand Coastal Policy Statement 2010 and the Regional Coastal Plan for Taranaki (2023)

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136 SOE of K Hooper (paragraphs 95 – 103).

137 SOE of K Hooper (paragraph 105).

138 SOE of K Hooper (paragraphs 106 & 107).

139 SOE of K Hooper (paragraph 109).

140 S42A Report (paragraphs 64 – 65).

141 SOE of B Lawn (paragraphs 10.2 & 10.3)

142 SOE of K Hooper (paragraph 89).

which contains similar objectives and direction.[143] With no evidence to the contrary, I also find this to be the case.

6.3 REGIONAL POLICY STATEMENT FOR TARANAKI 2010

113. There is agreement amongst the three planning experts that the RPS predates the NPS-UD and that the NPS-UD therefore takes precedence where there is conflict in the policies.[144] Mr Robinson identifies that a relevant policy of the RPS is SUD 1(a) which refers to amenity values being maintained or enhanced, and that this is inconsistent with NPS-UD objective 4 and policy 6 and amenity values being expected to change over time.[145]

114. Mr Lawn goes onto conclude that the development is not contrary to any of the RPS objectives and policies.[146] Ms Hooper reaches the opposite conclusion that the development is contrary to policy SUD 1(a) as *"the adverse effects of the subject dwelling, as assessed by Ms McRae, on the neighbouring property are not consistent with maintaining or enhancing amenity."*

115. Given my findings on the effects of the as built dwelling, I find that it is not contrary to the objectives and policies of the RPS, and that in any event the conflicting policy of the NPS-UD and amenity values being expected to change over time takes precedence over RPS policy SUD 1(a).

7. OTHER CONSIDERATIONS

7.1 OTHER MATTERS

7.1.1 Relevant Iwi Management Plan

116. In regard to s104(c) of the RMA and any other matter considered relevant, the s42A Report refers to Tai Whenua, Tai Tangata, Tai Ao, the Iwi Management Plan of Te Kotahitanga o Te Atiawa, and records that no comments have been received from Te Atiawa on the application and identifies that the application is consistent with the objectives and policies of the iwi management plan.[147] Mr Lawn agrees with that assessment.[148]

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143 SOE of K Hooper (paragraph 88).

144 S42A Report (paragraphs 67 – 70), SOE of B Lawn (10.14), and SOE of K Hooper (paragraph 90).

145 S42A Report (paragraph 69).

146 SOE of B Lawn (paragraph 10.15).

147 S42A Report (paragraphs 104 -106).

148 SOE of B Lawn (paragraph 11.2).

117. I agree with the conclusions of Mr Robinson and Mr Lawn on this matter.

7.2 PART 2 OF THE RMA

118. 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."*

119. The s42A Report states that the PDP has been robustly prepared in accordance with Part 2 of the RMA, and therefore assessment of Part 2 would not add to the evaluative exercise.[149] I also find this to be the case.

8. CONCLUSIONS ON 104 ASSESSMENT

120. 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.

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

9. CONSENT CONDITIONS

122. Mr Robinson recommended three conditions in his S42A Report. Those conditions by way of summary being:[150]

    a. Requiring consistency with the information submitted in the application, further information and specified site and building plans.

    b. The installation of vertical timber louvers at the eastern end of the 1st floor balcony.

    c. Compliance with the construction noise effects under NOISE-7 NZS 6803:1999.

123. As a result of the conditions offered by the Applicant at the hearing and refined in the Right of Reply, Mr Lawn in his SOE in support of the Right of Reply (dated 9 May 2025) sets out three alternative draft conditions sets. The alternative options cover potentially different determinations on whether rule MRZ-R33 / standard MRZ-S4 are applicable, and whether the proposed pergola on the eastern ground level deck is considered a permitted activity.

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[149] S42A Report (paragraph 107).

[150] S42A Report (Appendix 3).

124. As set out above, I have determined that rule MRZ-R33 and associated standard MRZ-S4 are applicable.

125. At the conclusion of the hearing, I sought that the Applicant provide plans of the proposed pergola accompanied by a PDP compliance assessment. I also sought that the pergola compliance assessment be separately peer reviewed by both Mr Robinson and Ms Hooper. The Applicant's pergola plans, and Mr Lawn's PDP compliance assessment were provided on 11 April 2025, with Mr Robinson and Ms Hooper providing their peer reviews on 16 April 2025, both of which considered the pergola would constitute part of the fence and would therefore breach MRZ-S10.

126. I recorded in Post Hearing Minute 2[151] that I found there to be sufficient doubt that the pergola would comply with the PDP as a permitted activity and therefore requested that the pergola design be resubmitted. In his SOE in support of the Right of Reply Mr Lawn set out the reasons for his disagreement with the reviews completed by Mr Robinson and Ms Hooper based on his interpretation of the PDP definitions that the proposed pergola is neither a fence nor a wall. I have considered My Lawn's additional evidence but maintain my previous finding that in the circumstances of this case the proposed pergola would constitute an extension of the boundary fence and not comply with MRZ-S10. I consider the proposed planter pots and small trees set out in Mr McEwan's Plan LD.02[152] to be an appropriate alternative and complying mitigation to the pergola. Mr Lawn's Draft Conditions *'Scenario 2: The planter pots and trees are implemented and MRZ-S4 is applicable',*[153] therefore accord with my findings.

127. I summarise those conditions as follows:

    a. Requiring consistency with the information submitted in the application, further information and specified site and building plans, including the proposed planter plan and proposed louver elevations submitted with the Right of Reply.

    b. The installation of vertical louvers at the eastern end of the 1st floor balcony and the eastern bay window within 40 working days.

    c. Installation of the proposed planter pots on the eastern ground level deck within 20 working days.

    d. Requirement for plantings to be maintained.

    e. Compliance with the construction noise effects under NOISE-7 NZS 6803:1999.

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151 Dated 17 April 2025 (paragraph 4).

152 Appended to Mr Lawn's SOE in Support of the Right of Reply as Appendix A).

153 Appended to Mr Lawn's SOE in Support of the Right of Reply as Appendix C).

128. Differences to the conditions recommended by Mr Robinson include the offered condition of installing louvers over the living area bay window, removal of the word 'timber' from the louver conditions to enable aluminium louvers as an alternative, and an allowance of 40 working days for the louvers to be installed. The increase from 20 working days is requested to account for procurement, manufacture and delivery of the louvers.[154] I consider 40 working days to be appropriate on that basis.

129. The conditions included in Mr Lawn's reply evidence also cover the offered conditions of the planter pots on the ground floor deck as an alternative to the pergola and an associated maintenance condition.

130. I have carefully considered this set of post hearing conditions and find that they are appropriate for further mitigating the potential adverse privacy effects of the proposal with the addition of the louver over the living area window and the planters providing foliage screening from the ground floor deck.

131. I have made some minor typographical amendments Mr Lawn's proposed 'Scenario 2' condition suite, and with those amendments I adopt the conditions as set out in Appendix A to this decision.

[154] Mr Lawn's SOE in Support of the Right of Reply (paragraph 5.3(d).

10. DETERMINATION

132. 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 submission, the Section 42A Report, the expert evidence and legal submissions on behalf of both the applicant and submitter, 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 Appendix A; and

    b. The application is consistent with the relevant provisions of the Proposed New Plymouth District Plan, and the National Policy Statement for Urban Development 2020, and is not contrary to the relevant objectives and policies of the Regional Policy Statement for Taranaki.

133. I therefore **grant** subject to the conditions in Appendix A, the application lodged by Bryan & Kim Roach & South Taranaki Trustees Limited (LUC24/48512) for retrospective resource consent for the construction of a new dwelling and associated fencing and retaining walls, at 26 Woolcombe Terrace, New Plymouth, being legally described as Part Lot 1 DP 4522 and Part Lot 2 DP 5012 (RT: 961499).

Signed by Independent Commissioner

Philip McKay

Dated: 4 June 2025

APPENDIX A

Conditions of Consent –LUC24/48512

APPENDIX A – DECISION CONDITIONS - LANDUSE CONSENT LUC24/48512

Approved Plans

1. The use and development of the land shall be consistent with application No. LUC24/48512 including further information submitted during the processing of the application and with the following plans:

Plan No	Name	Date
SK1.0	Proposed Site Plan	20.09.24
SK2.0	Proposed Ground Floor Plan	20.09.24
SK2.1	Proposed First Floor Plan	20.09.24
SK3.0	Elevations	7.03.25
SK3.1	Elevations	20.09.24
LD.02	Planters	30.04.25
SK07.02	Proposed Louver Elevations	28.04.25

Installation of Louvers

2. Installation of the vertical louvers at the eastern end of the front first-floor balcony (refer drawings SK2.1 and SK3.0) and the eastern bay window of the first-floor living area (refer drawing SK07) shall be completed within 40 working days from the commencement of this consent. Photographic evidence confirming the installation shall be supplied to New Plymouth District Council's Monitoring Supervisor.

3. Following installation, the louvers shall be maintained in accordance with condition 2 by the consent holder thereafter.

Installation of Planters

4. Installation of the proposed planter pots and trees on the eastern ground level deck shall be completed within 20 working days from the commencement of this consent. The proposed planter pots and trees shall have a combined height of a minimum of 1.6m high from the time of installation (refer drawing LD.02). Photographic evidence confirming installation shall be supplied to New Plymouth District Council's Monitoring Supervisor.

5. Any planting under Condition 4 that fails must be replaced at the expense of the consent holder within the next planting season (May to September). All plantings must continue to be maintained by the consent holder thereafter.

Construction Noise Effects

6. Construction noise from all remaining works shall comply with the relevant standards outlined under Rule NOISE-7 NZS6803:1999 requiring that the noise generated complies with the noise limits set out in Tables 2 and 3 of NZS 6803:1999 Acoustics Construction Noise, with reference to 'construction noise' taken to refer to mobile noise sources.

General Advice Notes

1. *The land use consent lapses 5 years after the date of decision unless the consent is given effect to before that date; or unless an application is made before the expiry of that date for the Council to grant an extension of time for establishment of the use.*

2. *An application for an extension of time will be subject to the provisions of section 125 of the Resource Management Act 1991.*

Schedule 1 – Summary of Evidence

Evidence for the Applicant – Bryan & Kim Roach

1. The Applicant was represented by legal counsel **Mr Scott Grieve** (Connect Legal Taranaki Lawyers) 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 12 March 2025, and verbal summaries of the evidence were provided at the hearing. The key points made by Mr Grieve in his legal submissions are summarised in the body of this decision.

3. Mr Grieve referenced in his legal submissions, and provided electronic copies of, the following cases: *Lysaght v Whakatane District Council [2021] NZHC 68 Whata J, Auckland International Airport Ltd v Auckland Council [2024] NZRMA 484, Hinsen v Queenstown-Lakes District Council [2004] NZRMA 115, Progressive Enterprises Ltd v North Shore City Council [2006] NZRMA 72, Harris v Bay of Plenty Regional Council EnvC W72/2008, Strata Title Admin Body Corporate 176156 v Auckland Council [2015] EnvC 125, Colonial Homes Ltd v Queenstown-Lakes District Council W 104/95, McGuire v Hastings District Council [2002] 2 NZLR 557, Hill Park Residents Association Inc v Auckland Regional Council EnvC A30/2003, Queenstown Lakes District Council v Hawthorn Estate Ltd CA [2006] 424, Rodney District Council v Eyres Eco-Park Ltd [2007] NZRMA 1, Papakura District Council v Heather Ballantyne CIV 2006-404-3269 26 April, 20 December 2007 Keane J, Green Bay East Residents Society Inc v AKL Council CIV-2024-404-2326 [2025] NZHC 644, Gisborne District Council v Eldamos Investments Ltd HC GIS CIV-2005-485-001241 [26 October 2005], Harrison J, R J Davidson Family Trust v Marlborough District Council [2018] NZCA 316, Shirley Primary School & Anor v Christchurch City Council [1999] NZRMA 66 (EnvC), Environmental Defence Society Inc v The New Zealand King Salmon Co Ltd [2014] NZSC 38*.

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

5. **Mr Bryan Roach** presented a supplementary statement of evidence at the hearing in response to the statements of evidence from Emma McRae and Kathryn Hooper on behalf of the submitter. Mr Roach's supplementary evidence comments specifically on the mitigation options suggested in Ms McRae's evidence.[4]

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[1] Dated 26 March 2025, with an updated version as presented at the hearing provided on 1 April 2025.
[2] Dated 9 May 2025.
[3] Dated 27 January 2025.
[4] Paragraph 12.2 of Ms McRae's evidence.

6. This was additional to Mr Roach's statement of evidence[5] as the applicant on behalf of himself, Kim Roach and the South Taranaki Trustees, that was circulated prior in accordance with the hearing directions.

7. Mr Roach's primary statement of evidence sets out his family's background in South Taranaki and association with both 24 and 26 Woolcombe Terrace, from their initial purchase of 24 Woolcombe Terrace in 2015. His evidence sets out the background to the purchase of 26 Woolcombe Terrace in 2019, and to the planning, design and construction of the new dwelling[6] for which retrospective resource consent is now sought. Mr Roach also sets out a response to the matters raised in the submission of Mr & Mrs Whyte and comments briefly on the Officer's Report.

8. **Mr Kyle Arnold** (Associate Director of Boon Ltd). Mr Arnold presented a supplementary statement of evidence at the hearing which comments on several matters in Ms McRae's evidence, including the presentation of an alternative permitted baseline sketch in a 3-D image format.[7] Mr Arnold confirmed in response to my question that his qualification is an Advanced Diploma in Architectural Technology, and apologised for not stating this in his initial statement of evidence.

9. Mr Arnold also displayed a 3-D model on the presentation screen at the hearing, which included the location of the PDP height in relation to boundary recession plane in relation to the as built dwelling, therefore illustrating the extent of the breach in a 3-D format.

10. Mr Arnold's statement of evidence[8] provides an overview of the project development as the project lead for Boon Ltd's architectural inputs. Mr Arnold's evidence describes the project and the design outcomes sought and sets out a chronology of the project including initial design and redesign. Mr Arnold's evidence sets out his understanding of the surveying issues that led to a breach of the height in relation to boundary standards of the then Operative District Plan. He comments on the Environment Court enforcement order and the outcome of the mediation, and on the Whyte's submission to the retrospective resource consent. Mr Arnold's evidence appends a letter from Armstrong Surveying and Land Development setting out their findings of their independent survey review of the as built house.

11. **Mr Jono Murdoch** (Registered Architect). Mr Murdoch did not present any supplementary evidence at the hearing but commented on and answered questions regarding his statement of evidence.[9]

12. Mr Murdoch's evidence is focused on the modelling and shadow study that he prepared for the Applicant in support of their retrospective resource consent. His evidence outlines the

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[5] Dated 12 March 2025.
[6] For which a Code Compliance Certificate was granted by NPDC on 15 October 2024.
[7] Images 1.1 and 1.2 of K Arnold supplementary evidence.
[8] Dated 12 March 2025.
[9] Dated 12 March 2025.

modelling techniques and processes used and the shading effects of the as built dwelling. Mr Murdoch's evidence also includes a permitted baseline shadow study and compares the effects of the modelled shading to that modelled for the as built dwelling, with architectural plans and shading diagrams appended.

13. **Mr Daniel McEwan** (Landscape Architect, Registered Member of NZILA, Timbre Landscape Architecture & Design Ltd). Mr McEwan presented a supplementary statement of evidence at the hearing which comments on Ms McRae's statement of evidence, including the methodology that Ms McRae used to determine that there was a vertical breach of 2m[10], and her comments on the permitted baseline diagram, the lack of a landscape concept, a potential foliage climbing screen for the open deck area, and the degree of adverse effects. Mr McEwan attached as Appendix A to his supplementary evidence a foliage climbing frame plan view for the open deck and photographic examples.

14. Mr McEwan's statement of evidence[11] includes the methodology that he used for his visual effects assessment including reference to photographs from the surrounding neighbourhood, and to architectural 3-D models and diagrams contained in appendices. Mr McEwan's evidence also includes comments on matters raised in the submission, an assessment of the visual related effects on the submitters property (28 Woolcombe Terrace), comment on the Council Officer's Report and on the use of louvres for mitigation.

15. **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 comments on Ms McRae's statement of evidence, including her assessment of effects in comparison to a compliant building and assessment against the matters of discretion in MRZ-R33 of the PDP.

16. Mr Bain's statement of evidence[12] provides peer review of Mr McEwan's evidence regarding the potential visual and amenity effects of the proposal. Mr Bain's evidence also comments on matters raised in the submission and the Council Officer's Report and appends photographs from the submitter's property of the Applicant's dwelling at 26 Woolcombe Terrace.

17. **Mr Ben Lawn** (Planner, McKinlay Surveyors Limited). Mr Lawn presented a supplementary statement of evidence at the hearing which comments on the respective statements of evidence from Ms McRae and Ms Hooper. The matters covered include the application of the permitted baseline, assessment under MRZ-S3, MRZ-S4 and MRZ-R33 of the PDP, and the degree of adverse effects on the submitters.

18. Mr Lawn's statement of evidence[13] sets out a statutory assessment of the retrospective application against the PDP and of its effects on the environment. Mr Lawn's evidence also

[10] Which is significantly greater than the maximum 0.725m calculated by the Applicant's experts.
[11] Dated 12 March 2025.
[12] Dated 12 March 2025.
[13] Dated 12 March 2025.

comments on matters raised in the submission and on the Council Officer's Report, includes assessment against the relevant statutory instruments under section 104(1)(b) of the RMA, and comments on the conditions of consent recommended in the Officer's Report. Appended to Mr Lawn's evidence is a summary of resource consent applications made under MRZ-R33 (Alternative Height in Relation to Boundary) of the PDP since that rule has had legal effect, as well as documentation of the application and decision reporting relating to one of those applications.

19. I note that **Mr Alan Doy** (Licensed Surveyor, McKinlay Surveyors Ltd) prepared written evidence but I excused him from the hearing. Mr Doy was excused as his evidence related to the compliance or otherwise, of the submitters' house at 28 Woolcombe Terrace with the relevant height in relation to boundary rule of the Operative District Plan and not to the application site at 26 Woolcombe Terrace, which is the subject of this hearing. I did not propose to ask any questions of Mr Doy.

Submitter's Presentation

20. The submitters, Mr Geoffrey Whyte and Mrs Johanna Whyte, of 28 Woolcombe Terrace, New Plymouth, were represented by legal counsel **Mr Aiden Cameron.** Mr Cameron presented legal submissions on behalf of Mr & Mrs Whyte that were also provided in writing at the hearing.[14]

21. Mr Cameron in his legal submissions sets out the legal principles applying to retrospective resource consent applications, the relevance of past conduct, the interpretation of planning documents and bundling of consents. Mr Cameron's legal submissions comment on the permitted baseline and different approaches of the witnesses to applying it, the submitters' case, the applicants' evidence, and the Council's section 42A Report.[15]

22. Mr Cameron referenced the following cases in his legal submissions: *Foodstuffs (South Island) Ltd v Christchurch City Council [1999] NZRMA 481 (HC), Strata Title Admin Body Corporate 176156 v Auckland Council [2015] EnvC 125, Colonial Homes Ltd v Queenstown-Lakes District Council W 104/95, Workman v Whangarei District Council A137/1998, NZ Kennel Club Inc v Papakura District Council W100/2005, Makill & Maskill Contracting Ltd v Palmerston North District Council W037/2006, Hinsen v Queenstown-Lakes District Council [2004] NZRMA 115 (EnvC), Smith Chilcott Ltd v Auckland City Council [2001] NZRMA 503; [2001] 3 NZLR 473 (CA). New Zealand Suncern Construction Ltd v Auckland City Council (1997) 3 ELRNZ 230 (HC), Ruru v Gisborne District Council PT W100/93, Playground Events Ltd v Waikato Regional Council [2011] NZEnvC 149, Walker v Manukau City Council EnvC Auckland C213/99, Runciman Rural Protection Society Inc v Franklin District Council [2006] NZRMA 278 (HC), Powell v Dunedin City Council [2004] 3 NZLR 721 (CA), Powell v Dunedin City Council [2004] NZRMA 49 (HC), Northland Milk Vendors Association Inc v Northern Milk Ltd [1988] 1 NZLR 530 (CA), Protect Aotea Inc v Auckland Council [2021] NZEnvC 140, Southpark Corporation Ltd v Auckland City.*

[14] Dated 27 March 2025.
[15] Prepared by Mr Cambell Robinson and dated 4th March 2025.

Council [2001] NZRMA 350 (EnvC), Edens v Thames-Coromandel District Council [2020] NZEnvC 13, Meridian Energy Ltd v Hurunui District Council [2013] NZEnvC 59, Port Otago Ltd v Environmental Defence Society Inc [2023] NZSC 112, [2023] 1 NZLR 205, New Zealand Heavy Haulage Association Inc v Auckland Council [2013] NZEnvC 240.

23. Mr Cameron provided electronic copies of *Protect Aotea Inc v Auckland Council [2021] NZEnvC 140*, and *Smith Chilcott Ltd v Auckland City Council [2001] 3 NZLR 473 (CA)*.

24. **Mr Whyte** explained in his statement that it is in support of the submission made by him and his wife Jo and that he is also authorised to make it on behalf of the G & J Whyte Trust. Mr Whyte's statement explains that it should be read in conjunction with the affidavit that he provided in support of the enforcement proceedings in March 2024.

25. Mr Whyte's statement sets out his experience and qualifications as an electrical and instrumentation engineer and that he has also been involved in the design and project management of building works. His statement sets out that their house at 28 Woolcombe Terrace was constructed in 2013 – 2014 and that he and Jo wish to remain living in it into their retirement.

26. The statement advises that the Whyte's enjoy their property for its northern aspect and coastal views as well as the space it provides to the rear which is sheltered from north and north-westerly winds. Mr Whyte explains that at times this rear area is used for outdoor living, with furniture and a barbeque stored in the adjacent garage and brought outside as required. This area is also used by the Whyte's grandchildren as a play area, including for bike riding.

27. Mr Whyte's statement sets out events since his affidavit was filed in March 2024 including the outcome of the Environment Court commissioner assisted mediation, and matters relating to both the common boundary wall between 26 and 28 Woolcombe Terrace and the front wall of 26 Woolcombe Terrace. Mr Whyte's statement then comments on the Council Officer's section 42A report and the earlier notification report, and the evidence prepared for this hearing on behalf of the Applicant.

28. I note that Mr Whyte's affidavit dated 20 March 2024 sets out a chronology of events relating to the construction of Mr & Mrs Roach's house at 26 Woolcombe Terrace up until that time.

29. **Ms Emma McRae** (Principal Landscape Architect, Boffa Miskell Ltd, Registered Member of NZILA). Ms McRae's statement of evidence[16] provides a landscape and visual assessment of the as built development at 26 Woolcombe Terrace with consideration of the relevant provisions of the PDP. Ms McRae's evidence also includes comments on the landscape evidence of Mr McEwan, landscape peer review evidence of Mr Bain, and the Council Officer's notification and s42A reports. Ms McRae's evidence also appends a methods statement from the Aotearoa New Zealand Landscape Assessment Guidelines.

[16] Dated 19 March 2025.

30. **Ms Kathryn Hooper** (Principal Planner & Executive Director, Landpro Limited, Member of New Zealand Planning Institute). Ms Hooper's statement of evidence[17] provides a planning assessment against the relevant statutory documents of the as built development at 26 Woolcombe Terrace. Ms Hooper also responds to the s42A Report prepared by Mr Robinson and to the relevant planning matters in the evidence filed on behalf of the Applicant. Ms Hooper's evidence appends the PDP matters of discretion relevant to MRZ-S4, MRZ-R31 and MRZ-R33; and relevant PDP strategic objectives.

Council Section 42 Reporting Officer

31. Following the submitter's presentation, the reporting officer, **Mr Cambell Robinson** (Senior Planner (Consultant) for New Plymouth District Council, and Director of Future Proof Planning Ltd) provided an overview of the issues and answered questions on his s42A Report. Mr Robinson confirmed that there was nothing that he had heard in the course of the hearing that changed his opinion that it is appropriate for consent to be granted subject to mitigation conditions.

32. Key points made by Mr Robinson were:
    a) Care needs to be taken if consent is granted, that mitigation conditions do not create a scope issue by triggering the need for additional resource consent.
    b) There is agreement amongst the planning experts that any streetscape and shading effects are less than minor.
    c) Considers that privacy effects are less than minor when compared to a credible permitted baseline and with the proposed mitigation of front deck and window louvers and a pergola and climbing foliage to screen the open deck (if in compliance with the PDP).
    d) Has taken a broad view of the applicable effects given the full discretionary activity status of the application.
    e) Considers that the relevant PDP rules to this application are MRZ-R1, MRZ-R4, MRZ-R31, MRZ-R33, and CRZ-R5, and therefore that MRZ-S4 Alternative Height in Relation to Boundary is applicable.
    f) In response to Mr Cameron's concern that the Council did not commission any independent landscape evidence, Mr Robinson advised that with the assessment being of an as-built building and with the clarifications provided by further information he was comfortable that he could assess the relevant PDP provisions.
    g) Regarding the effect of the sense of enclosure, Mr Robinson considered it sufficient to warrant limited notification. He advised however that with the proposed mitigation and considering the PDP policy direction for change in the MDRZ over time in terms of increased density, on balance he retains his recommendation that consent can be granted subject to conditions.

[17] Dated 19 March 2025.

Reply Submissions and Evidence Following Hearing Adjournment

33. Additional information, evidence and the submission in reply on behalf of the Applicant, are noy summarised in this schedule and are rather referred to in the body of the decision.

Appendix 4. Proposed Amended Conditions

Potential Amendments to Proposed Conditions – submitters – Marked up in RED

1. Consent Notice 12565106.1 shall be varied to read:

    a. *A maximum of one habitable dwelling shall be permitted on Lot 2 LT 582431. This building shall be located within the Area marked 'A' on Lot 2 LT 582431 as shown on the Site Plan by BTW Company, Drawing No. 230274-SU-01, Sheet 1, Rev B2. The habitable building shall not be erected outside of the Area marked 'A' on Lot 2 LT 582431.For the avoidance of doubt, a Minor Residential Unit ("MRU" or "Granny Flat") would be considered a second habitable dwelling and is not permitted.*

    b. *Any glazing shall be obscured glass ("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) within 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.*

    c. *No balconies or decks (more than 300mm above ground level) shall be established on the habitable dwelling or other structure within Lot 2 LT 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 dwelling shall either be;*

        i. *Oriented to face towards the South or East and/or:*
        ii. *Screened with a physical barrier (such as a trellis or similar structure) located adjacent to the window and positioned no more than 3 metres from the window of any living area on a habitable dwelling. The screening shall extend at least 1 metre to each side of the glassed area of the window and shall be at least level with the top of the glassed area; and glazed with obscured glass (as per the definition in b. above).*

    e. *No outdoor living areas associated with the dwelling (including but not limited to decks, patios, courtyards, pools, spas, barbeque areas, gardens) shall be located on the Western elevation of the dwelling.*

f. *No additional buildings or structures of any type or size (including any courts or arenas for sporting or recreational activities) may be built within 50m of the entire western boundary of the site.*

g. *At no time shall Lot 2 LT 582431 be used for Sport and Recreation Activities*[35] *unless the written approval for the activity is expressly given by the owners and occupiers of the following properties:*

i. 271 Weld Road Lower (Lot 3 DP 582431) – Greg & Katy Sheffield;

ii. 263 Weld Road Lower (Lot 1 DP 432478) – James Dinnis & Claire Frost,

iii. 247C Weld Road Lower (Lot 1 DP 500285) – Steven & Angela Blair,

iv. 247B Weld Road Lower (Lot 2 DP 432478) – Nicholas & Abigail Hackling, and

v. 255 Weld Road Lower (Lot 1 DP 484251) – Rebecca & Leanne Shaw.

All costs to impose the consent notice shall be borne by the applicant.

2. No later than 20 working days[36] from the date of grant of this consent, the Consent Holder must submit a Detailed Landscape Plan (DLP) prepared by a landscape architect, or other suitably qualified and experienced person, to Council's Monitoring and Enforcement Officer for written certification in accordance with the information requirements set out in Condition 3.

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

a. Where Council is unable to certify the DLP on the basis that the information requirements in Condition 3 have not been met, the Consent Holder shall submit a revised DLP for certification.

b. Any change(s) to the certified DLP must be submitted to Council's Monitoring and Enforcement Officer for certification in accordance with Condition 2.

i. Any change(s) to DLP shall not be undertaken until certification of the change(s) by Council has occurred in writing.'

ii. Conditions 4(a) to (c) apply post certification of amendments, where the Consent Holder shall implement within 10 workings days of certification

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[35] *Defined as: the use of land and buildings for organised sport, recreation activities, tournaments and sports education, e.g. parks, playgrounds, sportsgrounds, swimming pools, stadia and multi-sports facilities. It includes ancillary activities to sport and recreation activities. For the removal of doubt, this includes any horse training arena, riding school or other organized events, training or education involving equestrian activities.*

[36] Working days as defined within the Resource Management Act 1991

Advice Notes

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

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

   a. Extent of all landscape elements within the site including for the:

      i. Western/Southwestern ~~East~~ site boundary facing Lot 2 DP 432478 (247B Weld Road Lower)

      - the Poplar shelterbelt shall be removed.
      - A 25m wide native planting strip running parallel to the full length of the boundary ~~and replaced with a double row of mixed native evergreen planting for that extent of the built form of both the dwelling within Area A and ancillary buildings.~~
      - No planting shall breach a height plane of 3m, measured from the existing ground level at the top of the embankment (for the avoidance of doubt, this point is to be measured at the eastern edge of the 25m native planting strip required in the bullet point above).

      ii. Western/Southwestern ~~east~~ site boundary adjoining Lot 1 DP 432478 (247D Weld Road Lower);

      - the Poplar shelterbelt shall be removed
      - ~~and replaced with~~ A 25m wide native planting strip running parallel to the length of the boundary for the southern 50m of this boundary shall be established.
      - In all other areas a 5-metre-wide native planting strip running parallel to the length of the boundary shall be established.
      - 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. Western part of site adjoining Lot 3 DP 582431 (271 Weld Road Lower) at or near boundary the Poplar planting shall be removed.

      iv. Western side of Area A and habitable building and associated outdoor living area (within the proximity of the existing broadleaf hedge) isolated mounding and planting or a line of clear-stemmed, pleached Hornbeam trees (or similar).

      v. Extent of site contained within Land Covenant Area Y on DP 582431 removal of the existing planting 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. Detailed landscape maintenance plan indicating all maintenance tasks to be undertaken:

   i. Per calendar month for a minimum period of 24 months during 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. On an ongoing and regular basis thereafter. Maintenance tasks during ongoing maintenance shall include mulching, re-staking, and pest and disease management, control of all plant pests and wild sown species, replacement of damaged and dead plants, trimming of vegetation to ensure that it remains of the appropriate height.

e. Evidence that the 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 plan in response to the feedback.

   i. 271 Weld Road Lower (Lot 3 DP 582431) – Greg & Katy Sheffield or future landowner(s);

   ii. 263 Weld Road Lower (Lot 1 DP 432478) – James Dinnis & Claire Frost or future landowner(s);

   iii. 247C Weld Road Lower (Lot 1 DP 500285) – Steven & Angela Blair or future landowner(s);,

   iv. 247B Weld Road Lower (Lot 2 DP 432478) – Nicholas & Abigail Hackling or future landowner(s);, and

   v. 255 Weld Road Lower (Lot 1 DP 484251) – Rebecca & Leanne Shaw or future landowner(s);.

4. Such evidence shall be provided for any proposed variation or amendment to the DLP.

5. 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 possible, but no later than the next planting season, in accordance with the certified DLP.

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

Advice Notes:

- *The plantings will be monitored by Council's Monitoring and Enforcement Officer:*
  - *At the completion of the physical installation of the planting and*

associated works, and

- *24 months after the planting is first installed and completed.*
- *Additional monitoring may take place thereafter if required.*

6. A no complaints covenant shall be registered against the title of the site preventing the applicant complaining about noise, odour, traffic or other lawful activities occurring on any part of any of the following sites;

    i. 271 Weld Road Lower (Lot 3 DP 582431);

    ii. 263 Weld Road Lower (Lot 1 DP 432478):

    iii. 247C Weld Road Lower (Lot 1 DP 500285):

    iv. 247B Weld Road Lower (Lot 2 DP 432478):

    v. 255 Weld Road Lower (Lot 1 DP 484251) – Rebecca & Leanne Shaw.

    The covenant wording shall be provided by the applicants lawyer to the Planning Lead, NPDC, for approval.

    All costs to impose the covenant shall be borne by the applicant.

Appendix 5. Case Law:

A. Ballantyne Barker Holdings Ltd V Queenstown Lakes District Council [2019] NZHC 2844 [4 November 2019],
B. *Frost v Queenstown Lakes District Council* [2021] NZHC 1474.

IN THE HIGH COURT OF NEW ZEALAND
INVERCARGILL REGISTRY

I TE KŌTI MATUA O AOTEAROA
WAIHŌPAI ROHE

CIV-2018-425-000079
[2019] NZHC 2844

BETWEEN	BALLANTYNE BARKER HOLDINGS LIMITED Appellant
AND	QUEENSTOWN LAKES DISTRICT COUNCIL Respondent

Hearing: 9 September 2019

Appearances: M Baker-Galloway and S McArthur for Appellant
B Watts for Respondent

Judgment: 4 November 2019

JUDGMENT OF DUNNINGHAM J

This judgment was delivered by me on 4 November 2019 at 11.00 am, pursuant to r 11.5 of the High Court Rules

Registrar/Deputy Registrar
Date: 4 November 2019

[1] The appellant, Ballantyne Barker Holdings Ltd, owns a 48 hectare rural site on the eastern side of the Cardrona River near the town of Wanaka (the site). It wishes to subdivide the site to create seven new rural lifestyle lots, and a balance lot of almost 41 hectares.

[2] In the Environment Court the application was granted consent but not on the terms proposed. Rather, the Court granted a modified subdivision consent which only permitted the appellant to subdivide the site into five lots.[1]

[3] The appellant considers the Environment Court made a number of errors of law which led to it permitting only a five lot subdivision.

[4] The issue on appeal is whether the Environment Court erred in law in any of the ways pleaded by the appellant and, if so, whether the error is sufficiently material to the Environment Court's decision to warrant the matter being referred back to the Environment Court to be reconsidered.

Legal principles applying to appeals against Environment Court decisions

[5] Section 299 of the Resource Management Act 1991 (RMA) confines appeals against Environment Court decisions to questions of law only. There is no right of appeal on the factual findings of that Court. The onus is on the appellant to identify a question of law arising out of the Environment Court's decision and to demonstrate that the question of law has been erroneously determined by the Environment Court.[2]

[6] A question of law will arise where the Environment Court has:[3]

(a) applied a wrong legal test;

(b) come to a conclusion without evidence or one to which, on the evidence, it could not reasonably have come;

(c) took into account matters which it should not have taken into account; or

(d) failed to take into account matters which it should have taken into account.

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1 *Ballantyne Barker Holdings Ltd v Queenstown Lakes District Council* [2018] NZEnvC 181.
2 *Smith v Takapuna City Council* (1988) 13 NZTPA 156 (HC).
3 *Countdown Properties (Northlands) Ltd v Dunedin City Council* [1994] NZRMA 145 (HC) at 153.

[7] Even where an error of law is identified, relief will not be granted unless the error has materially affected the Environment Court's decision.[4]

[8] I accept, as the respondent submitted, that this Court must be vigilant in resisting attempts by litigants who are disappointed by Environment Court decisions to use appeals to the High Court to re-litigate factual findings made by the Environment Court.[5] This Court can only intervene on factual findings where there is no evidence to support the Environment Court's decision or where the true and only reasonable conclusion on the evidence contradicts the Environment Court's decision.[6]

[9] This Court, too, will have regard to the expertise of the Environment Court and will be slow to determine what are really planning questions, involving the application of planning principles to the factual circumstances of the case.[7]

[10] Although the appeal is of an interim decision of the Court, there is no suggestion the appeal is premature. The Court has made a final determination that subdivision consent will be granted for five lots only and it is this determination which is being appealed.

The application

[11] The site lies on the eastern side of the Cardrona River and ascends two terraces that have been cut into glacial outwash gravels by the action of that river. Although the centre of Wanaka township is only about three kilometres away, it is separated from the site by the Cardrona River which "forms a robust edge to the eastern side of the town".[8] The site is on the east side of the river on land which is zoned Rural General. Much of the rural land around the site has already been subject to a considerable amount of subdivision.

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4 *Countdown Properties (Northlands) Ltd v Dunedin City Council*, above n 3, at 153.
5 *New Zealand Suncern Construction Ltd v Auckland City Council* [1997] NZRMA 419, (1997) 3 ELRNZ 230 (HC) at 426.
6 *Edwards (Inspector of Taxes) v Bairstow* [1956] AC 14 (HL) at 36.
7 *Hutchinson Brothers Ltd v Auckland City Council* (1988) 13 NZTPA 39 (HC).
8 *Ballantyne Barker Holdings Ltd v Queenstown Lakes District Council*, above n 1, at [24].

[12] The Queenstown Lakes District Council (the respondent) declined the initial proposal to subdivide the site into nine lots (comprising eight lots of approximately one hectare each, and a balance lot of about 40 hectares).

[13] The application was modified and, on appeal to the Environment Court, the appellant sought subdivision consent to create:

(a) seven lots of between 0.8 and 1.55 hectares, each with a residential building platform; and

(b) a balance lot of 40.87 hectares, with a residential building platform.

[14] Prior to the hearing in the Environment Court, agreement had been reached with the original submitters in opposition to the proposal. The only immediate neighbours involved in the Environment Court hearing were the Le Bruns who own property adjoining the northern end of the site.[9] Specific landscaping conditions to protect the amenity of the Le Bruns were proposed.

The Environment Court decision

[15] A key issue before the Environment Court was how to prevent further subdivision beyond what was to be approved, in order to protect visual amenity values in the area, and avoid "over-domestication" of the landscape.

[16] In order to address that issue, the appellant originally proposed that a consent notice be registered which included the following prohibition on further subdivision:

> (18) The following conditions of the consent shall be complied with in perpetuity and shall be registered on the relevant computer freehold registers by way of consent notice pursuant to section 221 of the Act.
>
> …
>
> (b) There shall be no further subdivision of Lot 10 shown on Land Transfer Plan [xxxxx] and no more than one residential unit.
>
> If at any time the site is rezoned from rural general to a zoning or a method that provides for rural lifestyle or rural residential or urban land uses then

[9] As parties under s 274 Resource Management Act 1991.

> condition (b) shall be deemed to have expired and may be removed from the relevant computer freehold registers.

[17] This condition was agreed between the appellant and the Le Bruns. However, the Environment Court expressed a concern that amending or removing the proposed consent notice would be "relatively easy", and so would not provide sufficient protection against further subdivision.[10]

[18] The Environment Court issued a minute on 5 July 2018 following the hearing but before receiving final submissions from the parties. In it, the Court advised that it was "leaning towards granting a subdivision consent … for some lots. However, the number of lots depends on terms of the restrictive covenant". The Court said that the covenant proposed by the appellant was "rather unsatisfactory for similar reasons to the covenant discussed in *Criffel Deer Ltd v Queenstown Lakes District Council"*.[11] The Court suggested that if the appellant was to volunteer a fuller covenant that would protect against "all subdivision regardless of zoning" for at least three generations, then the Court might "find its decision easier".

[19] Following issue of the Court's minute, the Le Bruns changed their position and decided that they would prefer a restrictive covenant instead of the consent notice they had agreed to.

[20] In response to the Court's minute, the appellant volunteered to provide a restrictive covenant against subdivision, in perpetuity, to be registered over the title of each lot created, but again with the proviso that it would not be binding in the event the site was rezoned in the future.

[21] The Environment Court, however, said that the covenant the appellant offered was for "too long a period and insufficiently robust" and so concluded that a "smaller subdivision is appropriate to allow for more flexibility in the remote but not inconceivable possibility of future urban growth jumping the Cardrona River".[12]

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10 *Ballantyne Barker Holdings Ltd v Queenstown Lakes District Council*, above n 1, at [178].
11 *Criffel Deer Ltd v Queenstown Lakes District Council* [2018] NZEnvC 104.
12 At [187].

[22] In deciding how that smaller subdivision should be configured, the Court rejected the layout which the respondent's landscape expert supported, which was Lots 4, 5, 7 and 10 (plus Lot 6 if views were reinstated), in favour of Lots 1, 2, 6, 9 and 10, which the Court considered better achieved proper "clusters" of housing and would avoid "over-domestication" of the landscape.[13]

Errors of law

[23] In this case, the appellant raises two principal issues where the conclusions are said to arise from errors of law:

(a) the Environment Court's rejection of the appellant's proposed consent notice condition and its similarly worded restrictive covenant; and

(b) the Environment Court's rejection of Lots 4, 5 and 7 of the appellant's proposed subdivision.

[24] The appellant also raises a number of other errors, which relate to the Court's application of the RMA and the relevant planning documents, and to specific factual findings it made which the appellant submits were made on no, or insufficient, evidence.

Errors in the Court's decision to reject the proposed consent notice

Submissions for the appellant

[25] Ms Baker-Galloway, for the appellant, submits that the Environment Court applied the wrong legal test when it rejected, first, the consent notice condition, and then the restrictive covenant, proposed by the appellant. The consent condition had been agreed by the appellant and the s 274 party to address concerns relating to future subdivision.

[26] The appellant then asserts that the Environment Court, through its minute of July 2018, inappropriately issued the appellant with an "ultimatum" to volunteer a

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13 At [211].

covenant on terms that the Court thought appropriate. The Judge was aware that a consent authority cannot impose a condition requiring that a covenant be entered into.[14] The Court was wrong, therefore, to grant a subdivision for fewer lots on the grounds that a restrictive covenant on the terms thought appropriate by the Court was not volunteered by the appellant. Ms Baker-Galloway submits this approach was not based on environmental effects but, rather, on the Judge's preference for how development around Wanaka should occur.

[27] The appellant also submits that the restrictive covenant against further subdivision which the appellant did volunteer (being in perpetuity and with the proviso in relation to any future rezoning of the site), was wrongly found by the Court to be for too long a period and insufficiently robust. Ms Baker-Galloway points out this is contrary to numerous subdivision decisions which have similar consents. More importantly, the link to rezoning is entirely appropriate given the overall scheme of the RMA which is based on an adaptable approach to sustainable management. It is also normal to have both covenants and consent notices endure in perpetuity, and the time period proposed by the Court of 40 to 60 years is arbitrary and fails to take into account the ever changing environment that the RMA responds to.

[28] Furthermore, the Court's conclusion that a smaller subdivision is appropriate "to allow for more flexibility in the remote but not inconceivable possibility of future urban growth jumping the Cardrona River" is inconsistent with the Court's earlier reasoning, that the site should be protected against all subdivision for at least three generations regardless of rezoning.

Submissions for the respondent

[29] The respondent submits that there was no error in the Environment Court rejecting the consent notice condition which had been agreed between the appellant and the Le Bruns. Neither s 108 RMA, nor case law, support a requirement that the Environment Court is bound to impose a condition if it has been agreed.

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[14] *Upper Clutha Environmental Society Incorporated v Queenstown Lakes District Council* EnvC Christchurch C47/2004, 15 April 2004.

[30] In response to the assertion that the Environment Court put undue pressure on the appellant to volunteer a fuller covenant, the respondent points out that it is not unusual for a party seeking a resource consent of one kind or another to offer up conditions on an *Augier* basis.[15] In the present case, the Environment Court's minute gave the appellant a chance to consider whether it would offer covenants of a particular nature on an *Augier* basis. While it was not obliged to give the appellant this opportunity, it did so essentially as a "kindness" to the appellant. It was offered an opportunity to improve its case in light of the Environment Court's tentative views, and the fact the appellant declined to do so did not prejudice it.

[31] More fundamentally, though, the respondent submits that the appellant has failed to identify any reliance on an incorrect legal test by the Environment Court in this regard. Although the appellant asserts that the Environment Court's approach was "not based on environmental effects", that submission is contradicted by reference to the decision which explains that the Environment Court's concern is that "urbanisation of rural land should not happen by creeping stages" as that "usually results in very inadequate urban design".[16] This demonstrates that the Environment Court's root concern was with the effect of the proposal on the future environment.

[32] Finally, the respondent says that the Court's reasons for rejecting the covenant offered by the appellant were "appropriate questions for the Environment Court to have asked".

Discussion

[33] The appellant's concerns about the appropriateness of the Court issuing a minute suggesting the appellant may wish to volunteer a restrictive covenant does not raise a question of applying a wrong legal test. The Court correctly recognised that it had no jurisdiction to impose a restrictive covenant, but that the appellant could volunteer one. As the respondent submitted, the Environment Court's minute was not prejudicial to the appellant, rather it gave the appellant the chance to offer conditions that the Court considered would mitigate a potential adverse environmental effect of

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15 *Augier v Secretary of State for the Environment* (1978) 38 P & CR 219 (QBD); *Frasers Papamoa Ltd v Tauranga City Council* [2010] 2 NZLR 202, (2009) 15 ELRNZ 279.

16 At [178].

its proposal. The Court made it clear it was not "punishing" the appellant if it chose not to offer a restrictive covenant in the terms it suggested.

[34] I also agree that the fact the consent notice condition was agreed by the appellant and the s 274 party was irrelevant to the Court's decision. The Court was concerned with wider considerations, including avoiding over-domestication of the landscape and stemming "development creep". As the Court's concerns went beyond the effects on the immediate neighbours, there was no reason for it to accept the consent condition that had been agreed with those neighbours.

[35] The real issue is whether the Court was wrong to assume the consent notice proposed was insufficiently effective to preclude future subdivision, particularly of the large balance lot.

[36] The appellant had proposed a consent notice to prohibit future subdivision of the larger balance lot, but with the condition to expire if the site was "rezoned from rural general to a zoning or method that provides for rural lifestyle or rural residential or urban land uses". The consent notice was proposed pursuant to s 221 of the RMA which provides that a consent notice is deemed:

> (a) to be an instrument creating an interest in land and may be registered accordingly; and
>
> (b) to be a covenant running with the land when registered and bind all subsequent owners of the land.

[37] In the Court's minute it suggested the appellant "volunteer a fuller covenant (for at least three generations) against all subdivision regardless of zoning" as "the number of lots depends on terms of the restrictive covenant". The rationale for this appears to be that the Court considered that a consent notice was easily amended because it was a discretionary activity.

[38] The appellant's primary criticism of this statement is that it was unreasonable for the Court to conclude that the proposed consent notice could be relinquished

relatively easily when there was no evidence to support this and where such a conclusion was an irrelevant consideration.

[39] Consent notices are changed or removed through the same process that applies to applications for variation of resource consents under s 127 RMA. An application to change or remove a consent notice is considered to be a discretionary activity and will be considered in accordance with s 104(1) of the Act.

[40] The Court appears to have concluded that amending a consent notice is relatively easy. No evidence to support this conclusion was identified, other than its status as a discretionary activity.

[41] In my view, there was insufficient evidence to support such a bald conclusion. Furthermore, it contradicts the reliance that the Environment Court has repeatedly placed on the use of consent notices. For example, the Court in *McKinlay Family Trust v Tauranga City Council* stated:[17]

> … we have concluded that the ability of people and communities to rely on conditions of consent proffered by applicants and imposed by agreement by consent authorities or the Court when making significant investment decisions is central to the enabling purpose of the Act. Such conditions should only be set aside when there are clear benefits to the environment and to the persons who have acted in reliance on them.

[42] In *Foster v Rodney District Council*, the Environment Court noted that the following criteria may have some relevance in considering whether to vary or cancel a consent notice:[18]

(a) the circumstances in which the condition was imposed;

(b) the environmental values it sought to protect; or

(c) pertinent general purposes of the Act as set out in sections 5-8.

[43] Ironically in *Foster*, the application to vary a consent notice which was required for the proposal to proceed was declined, with the Court recording that the

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17 *McKinlay Family Trust v Tauranga City Council* EnvC Auckland A119/08, 29 October 2008 at [52].

18 *Foster v Rodney District Council* [2010] NZRMA 159 at [9].

purpose for which the consent notice was imposed "remains as pertinent today as it did in 2001".[19] The Court went on to say:

> [129] Accordingly, we consider that the purpose of the existing consent notice is to provide a high level of certainty to public and owners as to the obligations contained within that notice. It is intended to protect the environmental values of the soil reserve …
>
> [130] … In our view nothing has changed which justifies changing the original consent notice and there is no proper basis for a Variation of it at this stage. Accordingly, we would in any event refuse the Variation or cancellation of the consent notice which would make the grant of any consent to subdivision of limited usefulness to the applicant given that it would not enable the construction of a further dwelling.

[44] In considering such applications this Court has emphasised that "good planning practice should require an examination of the purpose of the consent notice and an inquiry into whether some change of circumstances has rendered the consent notice of no further value".[20]

[45] The case law makes it clear that because a consent notice gives a high degree of certainty both to the immediately affected parties at the time subdivision consent is granted, and to the public at large, it should only be altered when there is a material change in circumstances (such as a rezoning through a plan change process), which means the consent notice condition no longer achieves, but rather obstructs, the sustainable management purposes of the RMA. In such circumstances, the ability to vary or cancel the consent notice condition can hardly be seen as objectionable.

[46] Accordingly, I concur with the appellant's submission that the Court's assumption that a consent notice could be altered "relatively easily" was not a reasonable assumption. It was not supported by evidence and was inconsistent with decided cases on the circumstances in which a consent notice can be varied. To the extent the Court limited the terms of the subdivision consent because it assumed that the proposed consent notice condition would be ineffective to prevent future inappropriate subdivision, the Court was in error to do so.

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19 At [128].

20 *Green v Auckland Council* [2013] NZHC 2364, (2013) 17 ELRNZ 737 at [129].

[47] The second aspect of this issue is whether the Court was wrong to reject the consent notice condition (or in the alternative, the proposed restrictive covenant) because it was stated to lapse on the land being rezoned for more intensive subdivision rather than, as the Court sought, in a 40 to 60 year timeframe. The Court's justification for this appears to be that as the site was on the eastern side of the Cardrona River and there was "no suggestion on the evidence that the boundaries of Wanaka township might jump the Cardrona River", it was appropriate to preclude subdivision in the area for several decades.

[48] The Environment Court's reasoning on this appears circular. Effectively it is saying because it does not consider more intensive subdivision is likely to occur in this area for several decades, it is appropriate to prevent further subdivision for such a period of time. If it is correct, then no worse an outcome will occur if the consent notice condition lapsed when the land was in fact rezoned. However, it also admits of the possibility that in the future, urban growth might jump the Cardrona River, saying that limiting further subdivision now would better facilitate the site being developed comprehensively in that scenario. If rezoning was to occur within the 40-60 year timeframe in which further subdivision was prohibited, then the condition would prevent the comprehensive development the Court envisages would be appropriate by locking up this site until the expiry of that period.

[49] It is difficult to see a logical basis for linking removal of the consent condition to a time period rather than to the outcome of a public plan change process. While the reasons for seeking to preclude further subdivision under the current planning regime and in light of the objectives and policies applicable are clear, there is no reason given for the Court seeking to preclude further subdivision should the planning regime change. While the Court may well be right that that will not happen in the foreseeable future, it is more logical to have the no-subdivision condition lapse at the point the planning regime changes rather than at an arbitrarily chosen point in time in the future.

[50] In my view, that is also more in keeping with the RMA's purpose of sustainable management. The RMA recognises that plans must evolve to meet the community's needs, which is why district plans are reviewed approximately every 10 years. It is difficult to see why a condition should preclude subdivision notwithstanding a plan

change becoming operative that determines such subdivision would meet the RMA's sustainable management purpose. In effect, it would preclude use and development of the land in a way deemed appropriate under the RMA. I consider it is good planning practice to avoid foreclosing future options if they are determined to be appropriate through a plan change process, rather than the more ad hoc process of individual applications for resource consent.

[51] In conclusion, there is no rational basis identified in the decision for the Court to reject the consent condition (or the restrictive covenant) against further subdivision lapsing on rezoning rather than for a specified time period. For this reason, I am satisfied the Court erred in law when it determined that the proposed consent condition (and the alternative restrictive covenant) was unsatisfactory because it did not lock up the land against subdivision for 40 to 60 years.

[52] I am also satisfied that this error of law was material to the Court's decision. Although the respondent submits that there is no indication in the decision that the Environment Court would have granted more lots had the desired covenant been offered, that must be a possibility given the statement in the Environment Court's minute that a "smaller subdivision" was appropriate in the absence of the covenants suggested by the Court. Although I accept that the Environment Court also provides other reasons for the end result, I cannot rule out that the Court's view that the proposed consent notice (or similar covenant) was inadequate to protect the site from future subdivision was relevant to its decision to grant subdivision consent for only five lots.

[53] As the Court was in error to conclude that the consent notice and the volunteered covenant were both insufficiently robust to protect against further inappropriate subdivision, and this is likely to have been material to the Court's decision, it is appropriate that the appeal is allowed on this ground and I do.

Did the Court err in law in rejecting the subdivision of Lots 4, 5 and 7, which both the Council and the appellant's experts supported?

[54] By the time of the appeal hearing, the appellant sought to subdivide the site into eight lots, being seven smaller lots (Lots 1, 2, 4, 5, 6, 7 and 9) and one balance lot, Lot 10.[21]

[55] The Council's expert was of the view that four dwellings (on Lots 4, 5, 7 and 10) could be absorbed, or five dwellings (with Lot 6 as the additional dwelling) if a full view of the landscape from Ballantyne Road was ensured, while the appellant maintained that the landscape could absorb the eight dwellings proposed. Despite the agreed evidence on Lots 4, 5, 6, 7 and 10, the Environment Court determined the appropriate lots to be Lots 1, 2, 6, 9 and 10.

Appellant's submissions

[56] In this regard, the appellant submits that the Environment Court came to conclusions without evidence or which, on the evidence, it could not reasonably have come to, and has "put its opinions before those of duly qualified experts". The Court's rationale for approving the lots was based on its view in relation to how the lots form "a proper cluster or hamlet in a place in the landscape where it might be expected",[22] but the appellant argues that the Court refused consent to Lots 4, 5 and 7 based on an insufficient evidential foundation.

[57] Ms Baker-Galloway pointed to the expert evidence, summarised in the judgment, that all the houses would be mostly or fully screened from Ballantyne Road, and that the development would not result in any significant adverse effect to the natural character of the Cardrona River and its margins.[23] Furthermore, the landscape architects agreed that effective screening of the houses would generally be achieved at around 10 years from the time of planting and that most of the lots are on a lower

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21 Lots 3 and 8 having been deleted from the proposal.
22 At [212].
23 At [72].

terrace so they would barely impinge on the views from the road at all.[24] Given these conclusions, Ms Baker-Galloway queries the Court's conclusion that:[25]

> … five lots (including a balance lot) would strike the right balance under [the policy protecting landscape character and visual amenity values] and that any further lots would degrade the visual amenity values.

[58] The appellant is critical of the Court for:

(a) finding, on balance, a five lot subdivision was appropriate as not being over-domestication of the site and of the area;

(b) finding that proposed Lots 1, 2, 6, 9 and 10 would be the most appropriate lots in preference to the inclusion of Lots 4, 5 and 7, despite the latter not being opposed by the Council's landscape expert; and

(c) finding that reducing the number of dwellings on the site to five or less "would reduce the access from Ballantyne Road to 2.5 metres … [and] … would reduce the most direct signs of domestication on the side of Ballantyne Road", despite the Council's landscape architect finding that accessways are unlikely to have more than a low level of adverse effect on the perceived naturalness of the landscape.[26]

[59] In the appellant's submission, the Environment Court has "put its opinion before those of duly qualified experts" and there was no proper basis for it to refuse consent for Lots 4, 5 and 7.

Respondent's submissions

[60] The respondent submits that this issue is not genuinely amenable to being reduced to particular lot numbers in the way that it has been framed by the appellant. The key issues in the case arose out of concerns to protect landscape values from the cumulative effects of development, or over-domestication, as required by the relevant district plans. The location of particular lots was not being considered in isolation: it

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24 At [96].
25 At [153].
26 At [145].

was being considered in the context of the other lots proposed on the site and the other lots within the vicinity, and to isolate individual lots in the way the appellant has, is inconsistent with the exercise with which the Environment Court was tasked.

[61] The Environment Court recognised this, saying:[27]

> The argument in [the appellant's] eyes was over Lots 2 and 9. However, we are not bound to accept any of that evidence, especially since we accept Ms Picard's evidence that the issue of cumulative effects is important here, given the level of development in the vicinity.

[62] The respondent submits the Environment Court was correct when it stated that it was obliged to consider the expert evidence but not to accept it. More importantly, the Environment Court gave reasons for departing from the expert evidence, saying:

> [210] On balance we consider a five-lot subdivision is appropriate as not being over-domestication of the site and of the area, and while Ms Mellsop contemplated consent to Lots 4, 5, 7 and 10 (plus Lot 6 if views are reinstated) we consider there is a better subdivision layout.
>
> [211] We judge that the appropriate lots are Lots 1, 2, 6, 9 and 10 (i.e. excluding Lots 5 and 7). The rationale behind this distribution of lots is that 1 and 2 will form a relatively tight cluster with the two Bagley lots by the bridge, and one further lot on the lower terrace (Lot 6) and one (Lot 9) on the higher are not over-domestication and should not create a precedent even if the median lot size would remain uncomfortably close to a "Rural Lifestyle" or "Rural Residential" density. By joining the two Bagley houses this makes a four-house cluster which has the advantage that it does not make and therefore endorse a two-lot cluster which – as we have said – we regard as a near travesty of the concept.
>
> [212] The placement of Lots 1 and 2 should not be regarded as a precedent for placing houses close to the river. We consider the objectives and policies of both the ODP and the PDP generally discourage that. The reasons for allowing these two lots here is that Lots 1 and 2 are close to both the bridge and the Bagley properties with its two residences, and will form a proper cluster or hamlet in a place in the landscape where it might be expected.

[63] The respondent submits the Environment Court gave coherent and relevant reasons for departing from the combination of lots favoured by the two experts. The Environment Court endorsed the total number of lots that the respondent's expert witness recommended and differed only on the combination of lots which would result in the most appropriate landscape outcome. Its reasons for doing so were based on

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[27] At [199].

relevant considerations regarding the cumulative effects of development on landscape values.

Discussion

[64] I accept the respondent's submissions on the ability of the Court to depart from the combination of lots favoured by the two experts. The expert evidence provided opinions on which number and combination of lots would best achieve the objectives and policies of the relevant plans in question. These opinions were based on other factual evidence presented during the hearing including on the topography and landscape of the area and the layout of the proposed subdivision.

[65] The Environment Court, as a specialist tribunal, was entitled to take the factual evidence on which those opinions were based, review it, and come to its own conclusions on which combination of lots achieved the most appropriate landscape outcome. As long as the decision it makes is coherent and reasonably available on the evidence, it is not restricted to picking and choosing from the opinions proffered by the experts.

[66] The decision sought to limit the density of development so that it was appropriate for the zone and would achieve sensible clusters of dwellings. It clearly drew on Ms Mellsop's evidence that "four building platforms … could be absorbed without over-domestication of the landscape, as long as the remainder of the site was maintained as open pastoral land with no further subdivision or development" to justify limiting the total number of lots.[28] It then articulated its reasons for approving the particular lots identified in the decision. The Court was able to make this factual finding and no error of law arises.

Other errors of law

[67] The appellant then identifies nine further alleged errors of law in its written submissions, although not all were elaborated on in oral submissions. However, for completeness, I address them all.

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[28] At [117].

Did the Environment Court adopt an approach that was inconsistent with the Court of Appeal's decision in R J Davidson Family Trust v Marlborough District Council*?*[29]

[68] The appellant complains that, although the Environment Court concluded that the operative district plan (ODP) and proposed district plan (PDP) were sufficiently competently prepared under the RMA that there was no need to refer to Part 2 RMA except for two topics (efficient use of resources and natural hazards), the Court then went on to apply the ODP and PDP and Part 2 of the Act other than in accordance with the approach adopted by the Court of Appeal in the *Davidson Family Trust* case.

[69] However, as the respondent notes, the appellant does not explain what the alleged inconsistency is. In *Davidson Family Trust*, the Court of Appeal considered whether the principle articulated in *Environmental Defence Society Inc v New Zealand King Salmon Company Ltd* applied in the context of resource consent applications.[30] That is, should the consent authority assume the plan it administers gives effect to Part 2 of the RMA and therefore there is no need to refer back to Part 2, except in cases of "invalidity, incomplete coverage or uncertainty" of the relevant planning document?[31]

[70] The Court of Appeal held that where a plan had been competently prepared under the Act, the consent authority may take the view that there is no need to refer to Part 2, because doing so would not add anything to the evaluative exercise. However, it rejected the idea that consent authorities were not permitted to consider the provisions of Part 2 in evaluating resource consent applications unless the plan was deficient in some respect. However, it did note that "genuine consideration and application of relevant plan considerations may leave little room for pt 2 to influence the outcome".[32]

[71] In the present case, the Environment Court expressly averted to the *Davidson Family Trust* case. It concluded that there were only two topics on which it was

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29 *R J Davidson Family Trust v Marlborough District Council* [2018] NZCA 316, (2018) 20 ELRNZ 367.

30 *Environmental Defence Society Inc v New Zealand King Salmon Company Ltd* [2014] NZSC 38, (2014) 17 ELRNZ 442.

31 At [15].

32 At [82].

necessary to evaluate the proposal under Part 2 of the Act, being the efficient use of resources and natural hazards. Thus, the Environment Court effectively concluded that genuine consideration and application of the ODP and PDP left little room for Part 2 to influence the outcome, except in respect of the two topics identified. It then limited its consideration of Part 2 to these two topics.

[72] In my view, that was consistent with the approach articulated in the *Davidson Family Trust* case, and there was no error of law.

Did the Court err in its application of s 88A of the RMA?

[73] Section 88A of the RMA prescribes how to deal with a resource consent application that is still being processed when a new rule is introduced that would alter the acting status of the proposal. It provides that the application "continues to be processed, considered and decided as an application for the type of activity that it was for, or was treated as being for, at the time the application was first lodged".

[74] In *Pierau v Auckland Council*, which is cited by the appellant, the role of s 88A was described as a "shield" against a more stringent activity status applying to a consent which had been applied for before the introduction of those provisions but that an applicant would not be penalised should a more enabling activity status apply at the conclusion of a planning process.[33] However, the appellant makes no attempt to say why this principle applies in the present case where, as the respondent notes, the proposed subdivision had discretionary activity status under both the ODP and the PDP and therefore s 88A was not engaged.

[75] The Environment Court expressly recorded that "issues as to the status of the proposal under s 88A RMA do not arise because it is discretionary under both relevant plans".[34] In the circumstances, no error of law arises in the application of s 88A RMA as it does not apply.

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33 *Pierau v Auckland Council* [2017] NZEnvC 90 at [18].
34 *Ballantyne Barker Holdings Ltd v Queenstown Lakes District Council*, above n 1, at [43].

Did the Environment Court wrongly conclude that a selection of objectives and policies from the Proposed Otago Regional Policy Statement (PORPS) should be "taken into account"?

[76] This issue again refers to the approach adopted by the Court of Appeal in *Davidson Family Trust* and suggests the Environment Court's approach is contrary to that decision.

[77] However, as the respondent says, the Environment Court was doing as it was legally required under s 104(1)(b)(v), which provides that a consent authority must "have regard" to a proposed regional policy statement when determining a resource consent application. The appellant has not identified the Environment Court's error, nor, if there was an error, how its consideration of PORPS was material to the decision.

[78] This does not constitute an error of law, let alone one warranting remitting the matter back to the Environment Court.

Did the Environment Court wrongly give too much weight to the PDP?

[79] The appellant's concern about the weight placed on the PDP clearly arises out of the fact the Court said:[35]

> We judge that if we were considering the BBHL application only under the ODP we might have approved six of the eight lots sought. However, while we accept the parties' position that the objectives and policies under the ODP should be given more weight, that does not mean no weight should be attributed to the PDP.

[80] The issue arose because, at the time of the Environment Court hearing, the PDP was well advanced, but not operative. It had been publicly notified, public submissions had been received and heard and the Council's decision on those submissions had been publicly notified. Appeals against many parts of those decisions had then been lodged with the Environment Court. That meant that although the PDP was well advanced, it still could undergo significant changes through the appeal process. The question was what weight the Court was to place on the respective plans.

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35 At [209].

[81] On this issue the Court said:[36]

> We accept Mr Watts' submission that as the PDP objectives and policies have progressed to the decision stage they are entitled to some weight, subject to two weakening provisos:
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> (a) the relevant PDP objectives and policies are subject to fairly comprehensive appeals; and
>
> (b) the relevant PDP objectives and policies do not mark a radical change in direction mandated by a superior planning document such as a regional or national policy statement. If that were the case there would be a reason to favour the PDP over the ODP despite the appeals.
>
> To those we add a third: that the PDP does not obviously implement the policy of the PORPS as to the role of introduced trees in the region's landscapes.

[82] The appellant submits that very limited weight should have been given to the PDP objectives and policies given the Court's acknowledgement that:

(a) there are comprehensive appeals on those provisions;

(b) the relevant PDP objectives and policies do not make a radical change in direction mandated by a superior planning document; and

(c) the PDP does not implement the policy of PORPS in relation to the role of introduced trees in the region's landscape.

[83] However, as the respondent points out, the appellant has not submitted that the Environment Court was wrong to give any weight at all to the PDP. The real issue is whether, as the appellant submits, it should have been given "very limited weight" rather than "some weight" as determined by the Court.[37] In that regard, the Court correctly identified the principles which arise from various cases as to the weight to be put on a proposed plan, before deciding to put some weight on it.

[84] I therefore accept the respondent's submission that no error of law is identified in the way the Court approached the question of weight, nor can the Court's decision said to be so unsupportable that it falls into an error of law.

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[36] At [209].
[37] At [209].

Did the Environment Court fail to take into account the need for a consistency of approach with other comparable applications, including, but not limited to, the Orchard Road subdivision?

[85] The appellant argued, both in the Environment Court and this Court, that it was entitled to be treated in a consistent manner with comparable subdivision applications within close vicinity, both in terms of the restrictions imposed on future subdivision and on the issue of lot numbers and density.

[86] The appellant provided the Environment Court with examples of comparable subdivision consents issued by the respondent. Some of these included restrictions on further subdivision in perpetuity (with no fixed time period on them), and others were linked to rezoning. For example, the subdivision consent granted to Orchard Road Holdings Ltd included covenants preserving a large balance lot and restricting future subdivision of it. The appellants noted that the Commissioners added a proviso to the covenants so that they would be removed if the land was rezoned to enable subdivision as a permitted or controlled activity, and they also observed that "it is good planning practice to avoid foreclosing future options".[38]

[87] The argument on appeal focuses more on consistency in the terms of restriction on future subdivision rather than the more general submission that the same density of subdivision should be granted. Clearly the latter could not be expected because, as the Court pointed out, adopting a "like-for-like" density approach to each subdivision application would potentially lead to "development creep and ongoing intensification of rural living".[39] Furthermore, the Orchard Road subdivision which the appellant relies on as a precedent was located on the west side of the Cardrona River, near Wanaka township. The present application could be differentiated given it was on the eastern side of the river. Each application must be considered in its particular location and in light of the environment as it exists at that point, and there can be no expectation of a similar outcome in terms of lot numbers and density in subsequent applications.

[88] However, as I said, this ground of appeal is focused more on the terms of the non-subdivision condition and the appellant's expectation that it should be treated in

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38 Queenstown Lakes District Council *Orchard Road* decision dated 19 November 2013 at [96].
39 At [198].

a way that is both "appropriate and consistent with the local authority's treatment of directly comparable applications".

[89] I accept, as the respondent points out, that the Environment Court is not bound to follow the Council's decision and it is not the role of the Environment Court, as an appellate Court, to ensure that its outcomes are consistent with unappealed first instance decisions. I also accept that the Environment Court is not bound to approve subdivision on conditions resembling those upon which other subdivisions have approved. The real issue, therefore, is whether the condition imposed is correct in law and is imposed after taking into account only relevant considerations, not irrelevant considerations, and is not unreasonable.

[90] I have already found that the Court's decision to reject the proposed consent notice condition appears to have been based on a mistaken assumption that simply as a consequence of its discretionary status, it could be "easily" removed, even if it was still serving a useful function. I consider this view is erroneous for the reasons already explained. However, I do not consider the fact it is inconsistent with the conditions imposed on other subdivision consent applications issued by the respondent would on its own, be sufficient, to constitute an error of law.

Did the Environment Court fail to take into account the "transition provisions" of the Act dealing with the ODP and PDP?

[91] This alleged error of law appears to relate to the error of law raising the application of s 88A and the decision in *Pierau* which is discussed at [73]-[75] above.[40] However, the appellant does not indicate what "transition provisions" in the Act other than s 88A should have applied. I have already held that the Court correctly understood the law relating to the weighting of the two plans and could not be considered to be in error for placing "some weight" on the PDP.

[92] In the absence of an identified error, this ground of appeal is not upheld.

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40 *Pierau v Auckland Council*, above n 33.

Did the Environment Court erroneously take into account and rely on landscape evidence which was not given at the Environment Court hearing?

[93] The appellant argues that the Environment Court took into account and relied on the opinions of Dr Read, a landscape architect whose evidence was presented to the hearing Commissioners, but who did not present evidence in the Environment Court hearing.

[94] In the decision, the Court refers to Dr Read's opinion that "the existing trees have a highly domesticating effect that is diminishing the pastoral character of the site".[41] The Court notes that the Commissioners accepted her opinion. However, the Environment Court goes on to say that they prefer the evidence of Ms Steven and consequently did not accept that the proposed landscaping would over-domesticate the landscape, but rather, would enhance it.[42]

[95] It is unclear why the appellant has raised this point. The Environment Court was expressly required, by s 290A of the RMA, to "have regard to the decision that is the subject of the appeal or inquiry" when determining an appeal. Clearly Dr Read's evidence was one reason for the Commissioners declining the appeal at first instance. It was entirely proper for the Court to address this evidence and say why it rejected it in favour of the evidence presented in the Environment Court hearing. This ground of appeal is not upheld.

Did the Environment Court erroneously give weight to noise being experienced by people "enjoying the river" in proximity to Lots 1 and 2?

[96] The appellant considers the Environment Court erroneously gave weight to noise as being relevant to visibility issues under the district wide ODP objectives and policies. This is because under the heading "visibility issues", the Court discussed the proximity of Lots 1 and 2 to the east bank of the Cardrona River, noting that the screening planting proposed would not work fully for some five to 10 years, and then added the additional comment that "it does not prevent noise from being experienced by people enjoying the river".[43]

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41 At [114].
42 At [116].
43 At [132].

[97] I do not accept that the Court considered that noise was a "visibility issue". Rather, it was simply another environmental effect that may arise notwithstanding the issue of visibility being addressed. There was therefore no error. Furthermore, even if it was, it was not material to the outcome, as the Court granted consent to Lots 1 and 2.

Did the Court come to conclusions on the evidence it could not reasonably have come to?

[98] The appellant considers that two findings were made without evidence to support those conclusions. These were:

(a) Finding that "the land on the south of Ballantyne Road within about 1 kilometre of the bridge – all part of the local environment of the site - must be at or close to the limit of its capacity to absorb development if it is to remain rural".[44]

(b) Finding the medium density proposed by the applicant of approximately 0.97 hectares "may have been appropriate west of the Cardrona River, but it is not on the eastern side",[45] and applying domestication considerations based upon median lot size rather than average (mean) lot size, which is closer to six hectares.

[99] Again, these assertions were not elaborated on. However, I accept the respondent's submission that there was ample evidence upon which the Environment Court could base its conclusion as to the capacity of the land to absorb further development. It had in evidence maps showing existing land use and subdivisions in the area. There were also maps which showed:

(a) the relative distances between dwellings in the area surrounding the site;

(b) a dwelling density analysis in the area surrounding the site; and

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44 At [105].
45 At [198].

(c) an analysis of property sizes in the relevant area.

[100] The Environment Court made a site visit to the area as part of the hearing and would have seen the level of development first-hand. Furthermore, the expert evidence of Ms Mellsop, a landscape architect, was that the scale and extent of existing development east of the area meant that "the area is close to the threshold of its ability to absorb change".

[101] A determination that the area was close to the limit of its capacity to absorb further development was clearly a factual finding which the Court was able to make based on the evidence before it. No error of law arises.

[102] Similarly, the Court's conclusion on the appropriateness of the median density in this area was also open to it based on the evidence available. Again, the maps showing a dwelling density analysis and an analysis of property sizes in the area surrounding the site were available and this evidence would have been supplemented by the observations the Environment Court made on its site visit. Furthermore, Ms Mellsop's expert evidence differentiated the character of the area to the west of the Cardrona River from that on the east.

[103] Again, I concur with the respondent that this ground of appeal must fail because the Environment Court had evidence upon which it could reasonably reach its conclusion on the appropriateness of the median density achieved by the subdivision.

Conclusion

[104] In conclusion, I have found that the Environment Court was wrong in law to reject the proposed consent notice (and the subsequently proffered covenant in similar terms). The consent notice should not have been assumed to be ineffective to stop future inappropriate subdivision merely because an application to amend or remove it would have discretionary activity status. There was no evidence to support that assumption and it is contrary to case law which indicates there must be a material change in circumstances which renders the consent notice of no further value or, in fact, obstructs the sustainable management purpose of the RMA, before the consent notice can be removed.

[105] Furthermore, the Court has not identified why the lapsing of the consent notice condition (or the proffered covenant) should occur in a 40-60 year timeframe rather than at a point where the planning regime for the area enables more intensive subdivision. The Court's decision to reject either proposed no-subdivision condition because of this, was in error.

[106] The Court's minute of 5 July 2018 made it clear that the extent of subdivision was likely to be limited as a consequence of the Court's concerns about the adequacy of the no-subdivision condition to prevent inappropriate further subdivision. As a result, I accept that these errors were material to the decision and the appeal is allowed. The application is remitted back to the Environment Court for reconsideration in light of this decision.

Costs

[107] Costs are reserved.

[108] If costs cannot be agreed, any application for costs must be filed within 20 working days of the date of this decision, with any memorandum in response filed within a further 10 working days.

[109] Costs will be determined on the papers unless I need to hear from counsel.

Solicitors:
Anderson Lloyd, Queenstown
Meredith Connell, Auckland

IN THE HIGH COURT OF NEW ZEALAND
INVERCARGILL REGISTRY

I TE KŌTI MATUA O AOTEAROA
WAIHŌPAI ROHE

CIV-2021-425-000005
[2021] NZHC 1474

UNDER	the Judicial Review Procedure Act 2016
IN THE MATTER	of an application for review of the decision under the Resource Management Act 1991
BETWEEN	MURRAY NEIL FROST First Applicant
AND	WILLIAM ALAN NICHOLAS BROWN Second Applicant
AND	JENNIFER DIXON MUNNS Third Applicant
AND	QUEENSTOWN LAKES DISTRICT COUNCIL First Respondent
AND	DAVID CLARKE AND PAULA CLARKE AND PKF GOLDSMITH FOX TRUSTEES #3 LIMITED Second Respondents

Hearing: 2 June 2021

Appearances: P J Page and R A Crawford for Applicants
L F de Latour and J S J Aimer for First Respondent
M R Walker and B B Gresson for Second Respondents

Judgment: 21 June 2021

JUDGMENT OF DUNNINGHAM J

This judgment was delivered by me on 21 June 2021 at 4 pm, pursuant to r 11.5 of the High Court Rules

Registrar/Deputy Registrar
Date:

[1] Penrith Park is an attractive suburb in the lakeside town of Wanaka. It is located on a peninsula to the north of the town centre, and is zoned Penrith Park Special Zone (the Zone) in the Queenstown Lakes District Council's Operative District Plan (ODP). The objectives of the Zone include to:

(a) enable the creation of a low density residential development in a rural setting which is relatively close to Wanaka town centre; and to

(b) conserve the visual amenity of the locality to a significant degree.

[2] The second respondents, David and Paula Clarke and PKF Goldsmith Fox Trustees # 3 Ltd (the Clarkes), own two adjacent sections in Penrith Park. At the relevant time, these comprised Lot 61 which had frontage on to Penrith Park Drive, and Lot 60 which had access from Briar Bank Drive.

[3] In October 2018, the Clarkes applied for resource consents to develop a substantial home in an elevated position on Lot 60. Specifically, they sought:

(a) land use consent to construct a residential dwelling at the site and to undertake related earthworks, landscaping and vegetation removal; and

(b) consent to cancel consent notice 982581.5 which was registered on the title to Lot 60;

(the application).

[4] In a decision issued on 10 December 2018, the Queenstown Lakes District Council (the Council) decided to process the application on a non-notified basis,[1] and to grant the requisite consents.

[5] The applicants all own properties in Penrith Park. None are directly adjacent to the Clarkes' property, but all have views of the house which is now under construction. They consider the Council erred in making the notification decision and

[1] Pursuant to ss 95A-95F of the Resource Management Act 1991 (RMA).

the substantive decision and the consents should be set aside and reconsidered following (at least) limited notification.

Grounds of review

[6] Section 104(3)(d) of the Resource Management Act 1991 (R MA) prohibits the granting of a resource consent if the application should have been notified and was not. The applicants submit the Council erred in assessing the application for public notification under s 95A and for limited notification under s 95B. Consequently the consent should not have been granted. Had it been assessed correctly it would have been notified.

[7] The specific errors which are alleged are:

(a) The Council failed to consider all relevant adverse effects, and in particular;

(i) adverse effects on the public environment within the Zone; and

(ii) adverse effects on the applicants and on other affected persons with views of the site from Briar Bank Drive and Penrith Park Drive.

(b) The Council failed to correctly assess the effects of removal of vegetation, and in particular:

(i) it determined that native vegetation removal at the subject site "could be expected" and failed to consider r 12.7.3.3(ii)[2] which provides that removal of vegetation in this area is a discretionary activity;

(ii) it failed to consider the assessment criteria in r 12.7.6(iii) relating to vegetation removal;

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[2] All rules in this judgment are rules from the Penrith Park Special Zone section of the Queenstown Lakes District Council's Operative Plan (ODP).

(iii) it failed to obtain adequate reliable information to make an assessment of the effects of removal of vegetation; and

(iv) it applied the wrong statutory test to conclude limited notification was not required.

(c) The Council failed to properly consider the height rule found at r 12.7.5.2(i), and treated the maximum building height for a controlled activity of seven metres as a baseline for assessing the effects of a non-complying building with a maximum height of 8.9 metres.

(d) The Council erred by assessing the proposed activity as if it was a discretionary activity using the r 12.7.6(ii) assessment matters, rather than as a non-complying activity where all adverse effects were relevant.

(e) The Council erred when it allowed the removal of the consent notice on the title to Lot 60, relying on a conclusion that r 12.7.5.1(ii) was sufficient to ensure effects on the environment would be equivalent to condition 2 of the consent notice, when condition 2 requires complete invisibility from the Lake Wanaka shoreline of any structure on the property, while r 12.7.5.1(ii) is simply a site standard, and can be departed from.

The relevant ODP provisions

[8] The application site falls within the Penrith Park Special Zone of the ODP. Furthermore, all of Lot 60, and part of Lot 61 are located within the Penrith Park Visual Amenity Area of the ODP, and parts of Lot 60 and Lot 61 are within Penrith Park Vegetation Area A in the ODP. These areas attract specific Zone rules relating to visibility of buildings, visual amenity and vegetation removal.

[9] As already stated, the first objective of the Zone is "to enable the creation of low density residential development in a rural setting which is relatively close to

Wanaka town centre".[3] The other Zone objectives focus on conserving visual amenity of the locality, encouraging a high standard of building design, appearance and landscape and avoiding adverse effects on the environment. The environmental results anticipated include provision "of an appropriate visual transition between the open space margins of Lake Wanaka and the more intensively developed Wanaka town centre",[4] and protection "of the natural amenity without preventing development."[5]

[10] The Zone rules do not allow construction of a building as a permitted activity. Instead, buildings are controlled activities if they "comply with all the relevant Site and Zone Standards".[6] The matters the Council has reserved control over, as listed in r 12.7.6.(i), are:

> (a) Whether the building breaks the line and form of the landscape with special regard to skylines, ridges, hills and prominent slopes when viewed from the shoreline.
>
> (b) Whether the building is visually obtrusive from any public road, recreation area or public place.
>
> (c) Whether the colours of the roofs and walls are of low reflectivity and derived from the landscape, with bright accent colours or highly reflective colours used only in small areas for visual interest.
>
> (d) The extent to which the proposed building reflects the alpine characteristic of the Wanaka area as represented by the pitched roofs with dormer windows.
>
> (e) Whether the road access and internal driveways are situated in the most appropriate position and avoid excessive cuts and fills, and do not compromise the visual amenity of the site.
>
> (f) Whether the exterior walls are built of materials commonly found in the environs of the site.
>
> (g) The extent to which the building preserves the existing mass of vegetation.

[11] There are then further matters listed at 12.7.6(ii) for consideration if the building is a discretionary activity, for example, if it exceeds the site standard of a maximum height of seven metres, and these focus on the visibility of the building and its effect on visual amenity.

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3 ODP r 12.6.3.
4 Rule 12.6.4.
5 ODP r 12.6.4.
6 Rule 12.7.3.2.

The application

[12] The application for land use consent sought to construct a large two storey, architect-designed residential dwelling and to undertake associated earthworks landscaping and vegetation clearance. It was assessed as a non-complying activity under the ODP. The particular elements which required resource consent were as follows:

(a) construction of a new residential dwelling – controlled activity;

(b) construction of a dwelling within Activity Area (1) that intrudes into the skyline – restricted discretionary activity;

(c) construction of a dwelling within Activity Area (1) that will be visible from any public place within 50 metres of the shoreline (excluding the surface of Lake Wanaka) – restricted discretionary activity;

(d) undertaking earthworks exceeding 100 m^3 in volume, 200 m^2 in area, with a maximum cut height exceeding 2.4 metres – restricted discretionary activity;

(e) removal of vegetation and the disturbance of land in Activity Area (1) – discretionary activity;

(f) exceeding the maximum height limit of seven metres – non-complying activity;

(g) retaining wall located within six metres of the site's eastern boundary – non-complying activity.

[13] The second aspect of the application was to seek the removal of a consent notice registered on the title to Lot 60. The relevant condition in the consent notice provided as follows:

> That the screening profiles proposed for Lot 60 be planted, maintained and enhanced if necessary to ensure that dwellings on those Lots cannot be seen from the landward 50 metre strip from the shoreline of Lake Wanaka. "Shoreline" being defined as the water/land boundary at RL 277.27 above MSL.

The consent notice also attached plans to demonstrate where the screening vegetation was intended to be located on the Lot, along with profile drawings to show how it would screen buildings from the shoreline area as defined.

[14] The conclusion to the application stated that "the relevant condition [in the consent notice] replicates Penrith Park site standard 12.7.5.1(ii)(d)". That site standard provides:

> No part of any building located in Activity Area (1) of the Penrith Park Zone Plan 'A' north of the visual amenity line shall intrude into the skyline when viewed from any public place, excluding Lake Wanaka and any road or walkway within the zone.
>
> "The Skyline" means the line at which the landforms within Activity Area (1) of the Penrith Park Zone Plan 'A' and the sky appear to meet, provided that landforms are inclusive of any existing vegetation to be retained, earthworks or landscaping, the purpose of which is to reduce the visibility of buildings on a site and which is the subject of or forms part of any resource consent granted in respect for the site by the Council.

The application also noted the consent condition "does not need to be recorded as a consent notice" and "would make it difficult to build upon this site".

The decision

[15] It is not necessary at this point to discuss the decision in detail, as the relevant aspects of it will be discussed in the following sections. However, the application was accompanied by a comprehensive AEE. That was reviewed and adopted by the Council in its decision, albeit with additional comments. The Council concluded that neither public nor limited notification was required for either consent. It granted the land use consent subject to conditions, and the application to remove the consent notice.

Approach on judicial review

[16] There was no dispute between the parties as to the applicable principles on an application for judicial review. It is sufficient to note the observations made in *Coro Mainstreet (Inc) v Thames Coromandel District Council* regarding the Court's function on review:[7]

> [40] It is not the function of the Court on an application for review to substitute its own decision for that of the consent authority. Nor, will the court assess the merits of a resource consent application or the decision on notification. The enquiry the Court undertakes on an application for review is confined to whether or not the consent authority exceeded its limited jurisdiction conferred by the Act. In practice the Court generally restricts its review to whether the Council as decision maker followed proper procedures, whether all relevant and no irrelevant considerations were taken into account, and whether the decision was manifestly reasonable. The Court has a discretion whether or not to grant relief even if it is persuaded that there is a reviewable error.

First ground of review – failure to consider all adverse effects

Submissions for the applicant

[17] The applicants submit both the AEE, and the subsequent decision of the Council, failed to consider effects on properties to the north and west of the subject site, including the applicants' properties.

[18] All three applicants give affidavit evidence attaching photographs which show the dwelling which is now under construction is visible from their property. Mr Brown says it is the only house that breaks the skyline when viewed from his property. Similarly, Mr Frost attaches photographs showing the dwelling from certain rooms in his property and says these demonstrate the visual impact is clearly not less than minor. Ms Munns, too, says she can see the property from her front door and the construction of the dwelling is "very prominent". She also notes that when walking around the Penrith Park area using the road network and the lake-shore at Beacon Point, there is a "clear view of the house under construction from these public locations". She says

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7 *Coro Mainstreet (Inc) v Thames-Coromandel District Council* [2013] NZHC 1163, [2013] NZRMA 442 (footnote omitted); upheld on appeal; *Coro Mainstreet (Inc) v Thames-Coromandel District Council* [2013] NZCA 665, [2013] 17 ELRNZ 427; and see *O'Keeffe v New Plymouth District Council* [2021] NZCA 55, (2021) 22 ELRNZ 506 at [59].

"[t]he house certainly appears to be much taller, and less well screened, than any of the existing houses within the Visual Amenity area of the Penrith Park Zone".

[19] All three applicants say if they had the opportunity to submit on the application, they would have sought to ensure the proposed dwelling complied with the Zone policies and rules, in particular, the maximum height for controlled activities of seven metres, and that the (then) existing protected kanuka on the site was retained so that screening vegetation could serve its intended purpose.

[20] The applicants say the application is completely silent as to effects on properties to the north and west of the subject site, including their properties. They say no reasons are given as to why they were not deemed to be affected. Instead, the Council had a "fixation" on properties to the east of the subject site. In particular, the Council refers to five properties sited to the east of, and above the proposed dwelling, and satisfies itself that their views, as shown in Drawing Sk 1.5 to the application, are not comprised. It then concludes "[n]o other persons are considered affected by the proposal".

[21] While s 4.3.3 of the AEE states profile poles were erected to indicate the maximum height of the house, and that visibility was assessed using these poles, the photos which are taken of the poles only show views from the east. Images of other views, including from Penrith Park Drive and Briar Bank Drive, do not form part of the application or the Council's subsequent assessment of the application.

[22] The applicants acknowledge that s 7.0 of the AEE says the house would be visible from the west, but that other houses in the foreground, and trees, will draw attention away from the house. However, the applicants rely on the evidence of Ms Steven, a landscape architect, to contradict that conclusion. She attaches photographs to her evidence which she says demonstrate the existing houses and trees do not diminish the visual effects of the proposed activity when viewed from the west, in the way asserted in the AEE.

[23] The applicants submit the failure to identify persons affected by the activity is a procedural fault which undermines the validity of the notification decision. They

point out that in *McMillan v Queenstown Lakes District Council*, Mander J observed that:[8]

> If the applicant fails to identify persons affected by the activity, or to sufficiently inform of consultation that has taken place, that may be reflected in the standard of the decision achieved. The resulting inadequacy in the decision will be able to be traced to that procedural fault.

[24] Finally, the applicants are critical of the Council filing evidence from Ms Stagg, the Council planner who reviewed the application and made the decision, who says she did consider the actual or potential effects of the proposal on the applicants. The applicants suggest that evidence is self-serving and not credible in light of the Council's obligation to give reasons for its decisions.[9]

Submissions for the Council

[25] The Council does not accept that effects of the building on persons in the environment to the north and west were overlooked or not assessed. Ms de Latour says the decision expressly adopted the assessment in the AEE. This covered effects under three headings: neighbourhood character, visibility, and views and outlook.

[26] The effects of the proposal were considered in the context of the neighbourhood and, having regard to matters such as the character of the environment and the design of the particular dwelling, and concluded that effects on neighbourhood character would be less than minor. In terms of visibility, the AEE acknowledged that the building was visible from various locations to the west of the site, but considered that those effects would be partially mitigated by the surrounding existing development. The AEE concluded the design of the dwelling and its location within existing and proposed vegetation would reduce the visual amenity effects of the building and its visibility effects would be less than minor.

[27] The Council says it had adequate information to assess the visual effect of the dwelling. The AEE addressed the visibility of the application from various aspects including from the north and west of the site, and plans showed the height of the

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8 *McMillan v Queenstown Lakes District Council* [2017] NZHC 3148, [2019] NZRMA 256 at [34].
9 *Lewis v Wilson & Houghton Ltd* [2000] 3 NZLR 546 (CA) at [54].

building from all aspects. Together, the application and the decision contain an assessment of the effects of the building from:

(a) Beacon Point Road;

(b) public roads, recreation areas and public places in the Zone; and

(c) public and private properties to the west of the site.

Furthermore, Ms Stagg confirms both she, and the consultant planner assigned to process the application, visited the site, and the site was viewed from various points including Penrith Park Drive, Briar Bank Drive and Beacon Point Road which is close to the shoreline of the lake.

[28] While Council officers say they considered adverse effects from all sides of the site, it considered those who were located to the east of the site were likely to be most directly affected because the dwelling had the potential to affect views towards Lake Wanaka for those properties. That is why they gave greater attention to the viewpoints from those dwellings, where there would be a view of the new dwelling when looking out towards the lake.

[29] Ms de Latour says the Council did not need to then go on and specify there were less than minor effects on each person who could potentially see the proposed building. It was clear from the context of the decision that the effect of the building on persons who could potentially see it, was assessed to be less than minor. She points out the Council is not required to expressly refer to every relevant consideration that has been taken into account as this would be an impossible burden.[10]

Submissions for the Clarkes

[30] The Clarkes endorse the Council's submission, saying the AEE contains an assessment of the proposal on visual amenity from various locations to the west of the

[10] *Duggan v Auckland Council* [2017] NZHC 1540, (2017) 20 ELRNZ 31 at [79].

subject site and concludes those effects would be less than minor, and this conclusion was adopted in the decision.

[31] While the applicants, and their expert planner may have different views as to the merits of the conclusion reached, it was made in accordance with the law and was not unreasonable.

Discussion

[32] I accept the AEE provided an assessment of effects on neighbouring properties. This is particularly evident in the section assessing effects on neighbourhood character. That section concludes that:

> The proposed scale and design of the dwelling is consistent with that of other dwellings throughout the Zone. The dwelling has been designed to a high standard and recessive materials with low reflectivity have been selected to allow the dwelling to be absorbed by the surrounding landscape. A landscaping plan is also proposed to mitigate any potential effects the built form may have on the surrounding environment.

[33] Similarly, the AEE discusses the visibility of the house saying it will be "visible from various locations to the west of the site", but that the effect:

> Will be partially mitigated by the presence of dominant dwellings in the foreground adjacent to and [to] the west of, Penrith Park Drive that will attract attention to the foreground, rather than the proposed house in the background.

Having regard to the photographs provided in evidence, that conclusion is understandable.

[34] I also consider the evidence of Ms Stagg, which attaches photographs taken by both the consultant planner and herself, supports the view that a range of views were considered. I do not consider such evidence to be objectionable where it simply reports the range of enquiries undertaken, to counter a suggestion they were not undertaken, rather than to retrospectively justify a decision made.

[35] I do not consider the Council failed to consider public and private views from the west and north as alleged and this ground of review is not made out.

Second ground of review – failures in assessing effects of vegetation removal

Submissions for the applicants

[36] The applicants raise several issues in respect of the Council's assessment of the effects of vegetation removal.

[37] First, they say the Council did not have the information required to reach its conclusion that effects relating to vegetation removal would be temporary in nature, and would be mitigated by conditions of consent. The applicants say that, at a minimum, the Council needed to have the following information to fully assess the adverse effects of vegetation removal:

(a) the existing plantings, their ecological value and what screening they provide;

(b) the proposed removal, its ecological cost, the effects associated with the removal and the duration of those effects; and

(c) any proposed mitigation of the effects of removal, its ecological value and how long the mitigation will need to ameliorate the removal effects.

[38] The applicants say that the effects of removing existing plantings cannot be restricted to the construction period when like for like replacement of the removed kanuka vegetation is not proposed, and there is no assessment of the temporary adverse effects while the replacement vegetation takes effect. In short, it said the Council does not appear to have a clear understanding of the duration or nature of the effects of vegetation removal. Furthermore, it operated from an erroneous premise that some vegetation removal "could be expected".

[39] The applicants provide their own evidence from Ms Steven who discusses the relevant provisions in the ODP in regard to vegetation and then provides her own assessment of the effects of vegetation removal, noting in particular, that the dwelling under construction is "uniquely prominent" on the skyline, from both public and private aspects. She is critical of there being no expert landscape evidence included in the application or sought by the Council, and no alternatives offered to protect the skyline, which was previously defined by kanuka.

[40] Finally, the applicants submit that the assessment of effects on persons of vegetation removal for the purpose of limited notification uses the wrong statutory test. The Council concludes that the effects of vegetation removal are "not considered to be more than minor", when the test for affected persons under s 95E(1) of the RMA requires any effects on them to be less than minor. Accordingly, the Council could not lawfully conclude there were no affected persons in relation to the proposed activity because it had not established that effects were less than minor on anyone.

Submissions for the Council

[41] The Council rejects the suggestion it had inadequate information to assess the effects of vegetation removal. It points out that an application for resource consent must include an assessment of the activity's effects on the environment that:[11]

> [I]nclude[s] such detail as corresponds with the scale and significance of the effects that the activity may have on the environment.

The information provided does not need to be all encompassing,[12] and must be proportional to the scale and significance of the proposal.[13]

[42] The Council points out the application proposed the removal of approximately 640 m² of kanuka and, following completion of the construction of the dwelling, would provide 428 m² of structural planting, including kanuka and other native plants. The kanuka coverage across the application site was approximately 6,500 m² and so only 10 per cent of the existing kanuka on the site was proposed to be cleared.

[43] The application was accompanied by a series of plans, including a building plan and a landscape plan. The landscape plan showed:

(a) the location and extent of kanuka proposed to be retained;

(b) the location and extent of kanuka to be removed;

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11 RMA sch 4 cl 2(3)(c).
12 *Palmer v Tasman District Council* HC Nelson CIV-2009-442-331 at [105].
13 *Mawhinney v Auckland Council* [2017] NZEnvC 162 at [53].

(c) the additional landscaping proposed once construction of the building was completed; and

(d) the existing and proposed contouring at the site.

[44] The application also contained a full assessment of the effects of the removal of vegetation, which included a consideration of it against the assessment matters in r 12.7.6(iii). In addition, the site was visited by both the consultant planner and by the decision maker.

[45] The Council considers the key effect caused by the removal of vegetation is visual amenity effects. The screening effect of the vegetation and its impact on visual amenity was clearly set out in the application and (as Ms Stagg stated in her affidavit), those effects were capable of being competently assessed by the planners in this case. The Council points out that this Court has previously accepted that expert landscape input is not required in similar situations.[14] The information provided here was sufficient for the Council to understand the effects of the activity and it was entitled to rely on it in this case.

[46] Both the application and the decision acknowledged the dwelling would not be entirely screened by vegetation and would be seen from various locations within the Zone. However, the Council (through adopting the AEE in its decision) assessed that, given:

(a) the limited extent of kanuka proposed to be removed from the western, more visible site of the dwelling;

(b) the fact that only 10 per cent of the existing kanuka on the site was to be cleared;

(c) the combination of house design, vegetation to remain and vegetation to be replaced; and

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14 *Duggan v Auckland Council*, above n 10 at [64].

(d) the residential context within which the dwelling was composed

the effect of vegetation removal would be less than minor.

[47] The Council also relies on my observation in *Trilane Industries Ltd v Queenstown Lakes District Council* to respond to the evidence given by the applicants' landscape architect on the magnitude of effects:[15]

> [53] In addressing the question of whether the adverse effects of the proposal were all minor or less than minor, I take no account of the expert evidence subsequently filed to suggest that the landscape and visual effects were either more, or less severe than were outlined in Ms Mellsop's report which the Council accepted. It is not appropriate, on an application for judicial review of a notification decision under the RMA, to produce further expert evidence to support or reject the evidence relied on by the relevant consent authority. If the Council relied on evidence which was prepared by someone with appropriate expertise, and expressed a view that was reasonably available to that person on the proposal before them, the Council will not have erred.

[48] The Council says that Ms Stevens' evidence of the adverse effects of the removal of vegetation, where she reaches a different view, should be discounted for the same reasons. In effect, the applicants are seeking to challenge the merits of the decision which is inappropriate on judicial review.

[49] The Council also rejects the allegation it failed to have regard to temporary effects. It says these were addressed in the decision where it discussed the temporary nature of the vegetation removal and the mitigation proposed. While the applicants rely on the decision in *Trilane Industries Ltd v Queenstown Lakes District Council*, it can be distinguished. In *Trilane* the Council accepted there would be moderate temporary effects, but then ignored that for the purposes of notification on the grounds that they would be mitigated in due course.[16] Here, the application concluded that all the effects of the removal of vegetation would be less than minor.

[50] The Council also notes the applicants criticise the Council for not expressly addressing the assessment matters in r 12.7.6(iii). The Council rejects this claim (and

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15 *Trilane Industries Ltd v Queenstown Lakes District Council* [2020] NZHC 1647, (2020) 21 ELRNZ 956.

16 At [59].

notes this is inconsistent with the separate alleged error that the Council wrongly considered the discretionary assessment criteria in relation to height breaches), saying s 4.3.3 of the AEE contained an assessment of the removal of vegetation against the criteria in r 12.7.6(iii). While those criteria were not expressly mentioned in the decision, the decision expressly adopted the AEE and the effects of the removal of vegetation were considered at s 3.3.3 of the decision.

[51] Finally, the Council responds to the (belated) argument that the assessment of effects on persons failed to establish that the effects of vegetation removal are less than minor as required under s 95E(1) of the RMA.[17] This argument relies on the sentence used in the limited notification assessment at s 4.3.2 of the decision where it is said that "[r]esultant effects [of vegetation removal] are therefore not considered to be more than minor".

[52] While the Council acknowledges that the language used in its limited notification assessment, is not the language used by s 95E, it says it is important to read the decision as a whole. In that regard, it relies on *Millar v Ashburton District Council*, where the Court found that although the application wrongly referred to the test for avoiding notification as met because the adverse effects were minor or no more than minor, it was clear when the supporting evidence to the application and the decision were read as a whole, that the effects had been assessed as less than minor.[18]

[53] In this case, s 7.0 of the AEE concludes that the effects of the removal of vegetation are less than minor and the AEE was expressly relied on and adopted by the Council. The decision also provides clear reasoning regarding the effects of the activity and these reasons flow into the limited notification assessment where the Council concluded that no persons would be affected by the proposal. Accordingly, although the limited notification section of the decision wrongly refers to the test for public notification, it is clear from the decision when considered as a whole, that the Council considered the effects of removal of vegetation were less than minor and, so concluded there were no affected persons.

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17 This ground of review was not pleaded in the application for judicial review, but was traversed in submissions.

18 *Millar v Ashburton District Council* [2016] NZHC 3015 at [62]-[66].

Submissions for the Clarkes

[54] Again, the Clarkes support the submissions of the Council. In particular, they say the information before the Council was adequate for it to conclude the effects associated with removal of vegetation would be less than minor. The Council's adoption of the AEE, which concluded that effects on persons from vegetation removal would be less than minor, must be taken as informing the Council's conclusion that there were no adversely affected persons for the purpose of limited notification, despite the incorrect reference to the test of "no more than minor".

Discussion

[55] Although the applicants have raised a number of criticisms regarding the Council's assessment of the effects of vegetation removal, in the end, they focus most squarely on the Council's assessment that the effects of vegetation removal were "no more than minor", when the test for deciding who is an affected person for the purposes of limited notification is that the effects on that person are "less than minor". As Mr Page submits, this is not "simply some linguistic peccadillo; it is the legal standard required by the Act."

[56] As already outlined, the Council explains this by saying the decision is in error when it refers to the test for avoiding public notification, and I should look instead to the AEE and the conclusion. However, that is difficult to square with the actual wording of the decision. At s 4.3.2 of the decision, the decision maker draws different conclusions on the effects of the height breach and on the effects of vegetation removal and earthworks. The former is considered to be "less than minor" on owners and occupiers of neighbouring properties. The latter are considered to be "not to be more than minor". That conclusion reflects the earlier conclusion in the decision on the effects of vegetation removal when considering whether public notification set out at s 3.3.3 of the decision.

[57] I do not think this can be overcome by saying the Council also expressly adopted and relied on the AEE supplied by the applicants. It did so, but with the proviso that it made "additional comments" and it is in these comments that its conclusion on the effects of vegetation removal are reached. While it is possible that

was in error, that would seem surprising, particularly when at the start of s 4.3.2, the decisionmaker expressly addresses the requisite test for limited notification.

[58] In my view, the decision maker intended to reach her own conclusion on the effects of vegetation removal, which was that they were "no more than minor", and simply did not explain why no owners or occupiers of neighbouring properties were therefore considered to be unaffected by the proposal.

[59] Accordingly, this ground of review is upheld.

[60] As a consequence, I do not need to discuss in detail the other criticisms of the Council's decision on vegetation removal. It is sufficient to say that I accept the Council's submissions on these points and do not consider that the applicants raise any other error that is amenable to judicial review.

Third ground of review - incorrect use of building height rule

[61] The applicants point out that the Zone is unusual in that all buildings require resource consent. There are no permitted effects which can be disregarded under s 95E(2) RMA. In the present case, the proposed building would have a maximum height of 8.9 metres in one corner of the building which breached the maximum building height for controlled activities by 1.9 metres.

[62] The applicants acknowledge the decision states: "in this case, there was no permitted baseline relating to buildings, given that all buildings within [the Zone] … require a resource consent …". However, they say that the Council effectively treated the seven metre height limit as a permitted activity, the effects of which could be disregarded for the purposes of notification.[19] This was borne out by:

(a) the Council adopting what was said at s 7.0 of the AEE: that a "complying" house could be built more visibly on the site; and

[19] Under Resource Management Act, ss 95D(b) and 95E(2)(a)

(b) drawing SK 1.6 in the AEE containing sightline section drawings that show effects on views from the east and compare these to effects of a seven metre building which is labelled as "complying".

[63] The applicants say because all buildings in the Zone require resource consent, it is misleading to describe a building as "complying", in the sense of being permitted without the need for resource consent. Furthermore, even if a building complies with the maximum height standard, it must still be assessed against the objectives and policies of the Zone, including that it be "sited on the property in an unobtrusive manner in harmony with the natural forms and features of the landscape".[20] Thus, despite acknowledging there is no permitted baseline for buildings in the Zone, the applicants submit that by adopting the "seven metres as complying" reasoning, the Council either benchmarked the proposed activity to an unrealistic scenario (for example, a seven metre tall house further up the slope), or otherwise treated a seven metre building as representing a de facto permitted baseline and therefore wrongly disregarded the effects of such a building.

Submissions for the Council

[64] The Council rejects these allegations. Not only did the decision expressly acknowledge there was no permitted baseline, s 4.3 of the AEE contained a detailed consideration of the effects of the building against the controlled and discretionary assessment matters for building. Furthermore, s 7.0 of the AEE and s 3.3.3 of the decision, contained a full assessment of the visual effects of the building. There was nothing in the AEE or the decision that limited the buildings effects solely to the parts of the building above seven metres.

[65] The Council acknowledges that, at s 4.3.2 of the decision, it says "… the effects of the proposed height breach are less than what would otherwise be permitted by a compliant building located closer to the eastern boundary", and says it would have been better to use the word "anticipated", rather than "permitted". However, the Council submits, when read in context, it is clear that neither the application, nor the decision implied that the development could concur as of right, or that the seven metre

[20] ODP 12.6.3(4).

height limit could be relied upon as a type of permitted baseline. That said, the application had to be assessed in the context of a zone which sought to enable creation of low density residential development, subject to controls on the effects of that development. It was not an error to consider the effects in the context of what was anticipated in the Zone.

Submissions for the Clarkes

[66] The Clarkes make similar submissions to the Council. In particular, they reject the suggestion that the word "complying" used in both the AEE and in the decision when assessing the effects of the building height, was misleading. They say "complying" in this context means complying with the standards of the Zone. It does not mean permitted under the ODP. Thus, a seven metre high building is not a permitted baseline, but is a relevant consideration in terms of establishing the effects of buildings and whether such buildings should be declined consent or notified on the basis of their height.

Discussion

[67] The RMA provides that when considering the actual and potential effects on the environment of allowing an activity, the consent authority may "disregard an adverse effect of the activity on the environment if … the plan permits an activity with that effect".[21] Similar provisions apply in ss 95D and 95E when deciding whether a person is an affected person because of the activity's adverse effects on the person.[22] While it is common ground that the Council understood there was no permitted baseline relating to buildings, the applicants criticise it for allegedly treating site standards such as the height limitation as a baseline for assessing the effects of the proposed dwelling.

[68] I do not consider the Council treated the site standard as a permitted baseline and ignored its effects. What it has done is used the Zone objectives, and the site standards to give some context to the assessment of effects. In my view, this is sensible. Effects must be assessed in context, and in light of what exists, and is

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21 Resource Management Act, s 104(2).
22 Sections 95D(b) and 95E(2)(a).

anticipated in the zone. For example, leaving aside any permitted baseline considerations, the erection of a concrete tilt slab building would have different effects in a commercial zone from what it would have in a low density residential area, or in an outstanding natural landscape. It would be entirely artificial to assess effects without considering what exists and what is anticipated in the zone. In my view, that is all the Council has done here.

[69] Consequently, this ground of review is not upheld.

Fourth ground of review – using irrelevant assessment criteria

Submissions for the applicants

[70] The applicants criticise the Council for assessing the proposed activity with reference to the assessment criteria for controlled activities in r 12.7.6(i), and for discretionary activities in r 12.7.6(ii), when the proposed activity was non-complying. Although the planning evidence for both the Council and the Clarkes claim these matters are relevant considerations, the applicants say that r 12.7.6 does not set any matters for the Council to have regard to when assessing a non-complying activity, and accordingly, the Council is required to consider all adverse effects on the environment of the activity.

[71] Because controlled and discretionary activities are less restrictive activity statuses than non-complying activities, they have less stringent assessment criteria and the assessment of them can be properly limited in scope. Where activities do not comply with standards in the ODP, as here, there is no basis for assuming that policies are being implemented by using assessment criteria for controlled or discretionary activities, and the Council must apply greater scrutiny to all adverse effects of the activity.

[72] In short, it is an error of law to evaluate a non-complying activity by applying assessment criteria that guide decisions on controlled or discretionary activities. By way of example, the applicants say that using the assessment matters led to the Council's failure to observe that residents of Penrith Park, such as themselves, may be potentially affected parties. This is because the Council wrongly limited assessment

to public views from the lake shoreline. As a result, the Council failed to correctly determine the notification decision.

Submissions for the Council

[73] The Council, however, says it was both lawful and appropriate to consider the assessment matters in rr 12.7.6(i) and (ii), but that it did not limit its consideration to these matters. Furthermore, it is unclear exactly what effects the applicants say had not been assessed by the Council, save for the allegation it limited assessment of visual effects to views from the east and the shoreline, which has already been addressed under the first ground of review.

[74] The Council says the relevant rules for the Zone, such as the assessment matters in rr 12.7.6(i) and (ii), provide the Council with legitimate guidance to the approach to take in assessing the effects of the proposed building. It is through these rules that the objectives and policies of the ODP are implemented. More importantly, though, the Council says it did not limit the scope of its assessment matters contained in the ODP, nor did it fail to consider any relevant effects. As can be seen, the full effects of the building were considered in both the application and the decision.

[75] The reality is, when stripped back, the applicants' submission is that the Council did not put enough weight on certain effects when it assessed the visibility of the building, but that is inviting the Court to embark on a merits-based decision which is not appropriate on judicial review.

Submissions for the Clarkes

[76] The Clarkes reject the suggestion the use of the assessment matters for discretionary activities in the Zone materially narrowed the Council's assessment, saying there is no difference between non-complying and discretionary matters in terms of the degree of effects the Council may consider. The only difference between discretionary and non-complying activities is the latter must go through an additional statutory hurdle under s 104D of the RMA to be granted consent. It was lawful for the processing planner to treat the discretionary activity assessment matters as relevant considerations when assessing the proposal.

Discussion

[77] This ground of review can be addressed quickly. It was clearly both lawful and appropriate to consider the assessment matters in rr 12.7.6(i) and (ii). As the Council says, these provide the Council with legitimate guidance to the matters which are most relevant in assessing the effects of the proposed building in light of the objectives and policies of the ODP. However, the Council did not limit its consideration to these matters. For example, as already discussed, it did consider views from neighbouring properties. I accept too, that apart from the allegation that views from neighbouring properties were not considered, the applicants do not raise any other relevant consideration which it says was ignored.

[78] In conclusion, the assessment criteria the Council used were relevant, but the Council did not confine itself to these. This ground of review is not made out.

Fifth ground of review – removal of consent notice

Submissions for the applicants

[79] The applicants submit the Council failed to identify the distinction between the consent notice and r 12.7.5.1(iii)(b).[23] The consent notice is a mandatory legal obligation. While in force, it requires the dwelling on Lot 60 to be screened from the defined area of shoreline in perpetuity. Compliance cannot be excused because it is difficult, or because it might disappoint the land owner's development aspirations.

[80] The applicants say the Council decision maker wrongly characterised the obligations under the consent notice (to comply) and the rule (which triggers the need for consent) as equivalent mechanisms. Without enquiring into what development of the site that complied with the consent notice might entail and what its relevant effects on the public and affected persons might be, she could not make an appropriate assessment of the effects of removing it.

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[23] This is another site standard from r 12.7.5 of the ODP which states: "no building on any allotment affected by the building line shall be visible when viewed from any public place within 50 m of The Shoreline, excluding the lake surface, and referred to on Penrith Park Zone Plan 'A' as the Beach". This rule was not referred to in the AEE or the decision.

Submissions for the Council

[81] The Council says it set out its understanding of the legal nature of the consent notice in the decision saying: "this consent notice was imposed so that future lot owners were aware of their obligations." The Council says there is no error in its understanding of the legal nature of the consent notice and it is consistent with descriptions of the purpose of a consent notice in similar cases.[24]

[82] The Council then goes on to say the effects of removing the consent notice were considered in s 3.3.3 of the decision under the subheading "Visual Amenity". Although the consent notice was not referenced directly, the decision maker concluded the level of visibility of the proposed building would be mitigated by the use of recessive materials and existing and proposed vegetation such that the adverse effects would be not more than minor. In any event, the Council says that given the effects of the consent notice and the rules both fall to be considered as discretionary activities, there was no error in its approach.

Submissions for the Clarkes

[83] The Clarkes also do not agree that the Council erred in its assessment of the application to cancel the consent notice. It says in the circumstances, and given the relevant matters Council had to consider, it was reasonably open to it to deem that if the effects of the breach of the site standard were acceptable, so too, were the effects of cancellation of the consent notice.

Discussion

[84] The Clarkes' application sought the cancellation of the consent notice registered on the title to Lot 60 which required screening planting to be planted, maintained and enhanced if necessary, to ensure that the dwellings on Lot 60 could not be seen from the landward 50 metre strip from the shoreline of Lake Wanaka.

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[24] *Foster v Rodney District Council* [2010] NZRMA 159 at [129]; *Speargrass Holdings Ltd v Queenstown Lakes District Council* [2018] NZHC 1009, (2018) 20 ELRNZ 645 at [67].

[85] Consent notices must be imposed by a territorial authority when granting a subdivision consent where there is a condition to be complied with on a continuing basis by the subdividing owner and subsequent owners.[25] The consent notice creates an interest in the land, can be registered under the Land Transfer Act 2017 and will bind subsequent owners. The purpose of a consent notice is to ensure future land owners have notice of, and are bound by, subdivision consent conditions that have ongoing effect.

[86] Section 221(3) of the RMA allows an owner to apply to a territorial authority to vary or cancel any conditions specified in a consent notice. Any such application is subject to the same process that applies to applications for variation of resource consents under s 127 RMA. An application to change or remove a consent notice is a discretionary activity and will be considered in accordance with s 104(1) of the RMA.

[87] In *Ballantyne Barker Holdings Ltd v Queenstown Lakes District Council*, I discussed relevant case law on the purpose of consent notices and the approach to be taken in respect of their removal.[26] For example, in *McKinlay Family Trust v Tauranga City Council* the Environment Court stated:[27]

> … we have concluded that the ability of people and communities to rely on conditions of consent proffered by applicants and imposed by agreement by consent authorities or the Court when making significant investment decisions is central to the enabling purpose of the Act. Such conditions should only be set aside when there are clear benefits to the environment and to the persons who have acted in reliance on them.

[88] I also cited *Foster v Rodney District Council*, where the Court said:[28]

> [129] Accordingly, we consider that the purpose of the existing consent notice is to provide a high level of certainty to public and owners as to the obligations contained within that notice. It is intended to protect the environmental values of the soil reserve …
>
> [130] … In our view nothing has changed which justifies changing the original consent notice and there is no proper basis for a Variation of it at this

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25 Resource Management Act, s 221(1).

26 *Ballantyne Barker Holdings Ltd v Queenstown Lakes District Council* [2019] NZHC 2844, (2019) 21 ELRNZ 428 at [41]-[45].

27 *McKinlay Family Trust v Tauranga City Council* 6 EnvC Auckland A119/08, 29 October 2008 at [52].

28 *Foster v Rodney District Council*, above n 24.

> stage. Accordingly, we would in any event refuse the Variation or cancellation of the consent notice …

[89] In *Ballantyne Barker Holdings Ltd*, I reached the following conclusion:[29]

> [45] The case law makes it clear that because a consent notice gives a high degree of certainty both to the immediately affected parties at the time subdivision consent is granted, and to the public at large, it should only be altered when there is a material change in circumstances (such as a rezoning through a plan change process), which means the consent notice condition no longer achieves, but rather obstructs, the sustainable management purposes of the RMA. In such circumstances, the ability to vary or cancel the consent notice condition can hardly be seen as objectionable.

[90] In the present case, the application was made on the basis the consent notice condition was "essentially a repeat of the District Plan rule [12.7.5.1(ii)(d)] and so does not need to be recorded as a consent notice". It then goes on to say that "due to the topography of the site this rule would make it difficult to build upon the site".

[91] These statements are contradictory. The first suggests that the rule provides the same protection as the consent notice by referring to the equivalence of the consent notice and the rule. That is, not correct. First, the rule referred to relates to intrusions into the skyline whereas r 12.7.5(ii)(e) seems more relevant as it addresses visibility of the building from the shoreline. A building could be sited below the skyline but still be visible from the shoreline. In any event, whichever rule is intended, they are site standards. Unlike the condition in the consent notice, there is no obligation to comply with a site standard. A departure from a site standard, and the degree of adverse effects flowing from that departure, is simply a matter to be considered in deciding whether it is appropriate to grant a resource consent.

[92] The second statement says it would be difficult to develop the site while still complying with the consent condition. That suggests the purpose of removal is to give the land owner flexibility to adopt less stringent screening than is required by the condition, which means an equivalent environmental outcome is not intended to be achieved.

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[29] *Ballantyne Barker Holdings Ltd v Queenstown Lakes District Council*, above n 26.

[93] However, the real issue is not what the application said but whether the decision maker correctly assessed the effects of removal. In this regard, I consider the error in the AEE was perpetuated by the decision maker assuming that r 12.7.5.1(ii)(d) was equivalent to the condition. As already pointed out, r 12.7.5.1(ii)(e) most closely relates to the effects addressed by the consent notice. More importantly, the consent notice does not, as the decision maker assumes, simply require an assessment of the visibility of the development from within 50 metre landward of the shoreline of Lake Wanaka. It is a positive requirement to plant and maintain vegetation so a dwelling would not be visible from the defined area of the shoreline.

[94] The Council's decision wrongly assumes that the "existing provisions of the District Plan are sufficient to ensure compliance with [this rule]", but then goes on to say "or any effects from non-compliance are assessed". There is no appreciation that removal of the consent notice removes the certainty the general public have that the requisite vegetation screening will be in place. Instead, it makes the level of screening a matter of assessment on a case by case basis, where residents may or may not have a say. That is, in itself, an effect on the environment and there is no assessment of its magnitude.

[95] Given the failure to appreciate the distinction between the mandatory nature of a consent notice, and the discretion to depart from a site standard such as found in r 12.7.5.1(ii)(d) or (e), I consider the Council made its decision as to notification on an incorrect factual and legal basis.

[96] Accordingly, its conclusion that no persons are considered affected by the proposal to remove the consent notice was reached in error and this ground of review is also upheld.

Discretion to grant relief

[97] Having found that there was an error in the decision not to notify the land use consent and in the decision not to notify the application to cancel the consent notice on Lot 60, I go on to consider the discretion to grant relief.

[98] Although I have a discretion whether to grant relief where an error of law has been made out, the starting point is that relief should be granted and there must be "extremely strong reasons" not to do so.[30] A range of factors are relevant to whether relief should be denied, including whether an applicant has delayed issuing proceedings,[31] whether innocent third parties would be unduly prejudiced, or whether other remedies are available. However, each case needs to be looked at on its own facts, and the starting point is that relief should follow unless there are good reasons to decline it.

Submissions for the applicants

[99] The applicants say they have acted promptly to challenge the decisions. Mr Frost says he was unaware consent had been granted on a non-notified basis on 10 December 2018. He only became aware of it when construction started in mid-September 2020, pre-fabricated concrete wall panels were installed, and he reviewed the Council's consenting records for the site. In late October 2020, he obtained legal advice that satisfied him he and his neighbours could reasonably have expected to be notified of the Clarkes' resource consent application. His lawyers were instructed to write to the Clarkes asking them to cease construction so that "a resolution might be found before matters progressed too far" and they did so in a letter dated 10 November 2020.

[100] On 10 December 2020, Mr Frost's lawyers wrote to the Council and the Clarkes' lawyers identifying the errors they considered were made in processing the Clarkes' application. While construction paused over the Christmas break, it commenced again in January 2021. Mr Frost says:

> I have, along with the other two applicants in this proceeding, moved as quickly as I possibly could to alert Mr and Mrs Clarke to our concerns when it became apparent what the scale of the building that they were proposing to build was. I asked Mr and Mrs Clarke to stop construction, but they have continued on despite knowing that we considered their resource consent to be flawed and that we proposed to ask that the High Court quash it.

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30 *Air Nelson Ltd v Minister of Transport* [2008] NZCA 26, [2008] NZAR 139 at [60]-[61].
31 At [66].

[101] The applicants point out that the respondents were on notice of the applicants challenge from at least 10 November 2020. By continuing construction, they accepted the financial risks associated with their choice.

[102] The applicants also point out they were under no obligation to seek interim relief. In *Murray v Whakatane District Council*, Tipping J approved the High Court's conclusions that there was no obligation on the plaintiffs to seek interim relief, noting that the affected party "made a commercial decision to carry on with the subdivision knowing that it was under challenge".[32] While the applicants accept the second respondents have spent almost $1,500,000 on construction, they say it is not clear how much of that was incurred after being put on notice of the challenge. In any event, the extent and nature of the Council's non-notification breach weighs in favour of granting relief.

[103] Mr Page points out that the applicants have not sat on their rights. They pro-actively engaged with the Council and the Clarkes as soon as they became aware of the decisions and they initiated this proceeding when it became apparent the matter could not be resolved. Nothing has occurred to displace the presumption that relief should be granted.

Submissions for the Council

[104] The Council does not specifically comment on the discretion to grant relief except to point out that since the consent was granted, a further resource consent was granted on 12 November 2019, authorising a boundary adjustment between the two land parcels that make up the subject site. New certificates of title have been issued in reliance on that resource consent. The consent notice was registered on the title to Lot 60 DP 27493. However, as the result of the implementation of the boundary adjustment consent and the issue of new certificates of title, Lot 60 DP 27493 no longer exists. Instead, the property at 28 Briar Bank Drive is now contained within Lot 2 DP 547764. The Council therefore queries whether there is any practical ability to reinstate the consent notice which applied to the title of Lot 60 DP 27493.

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[32] *Murray v Whakatane District Council* [1999] 3 NZLR 276 (CA) at [22].

Submissions for the Clarkes

[105] If grounds of review have been made out, the Clarkes submit this Court should exercise its discretion to decline relief. Mr Gresson points out the Clarkes are an innocent party who will be substantially prejudiced if the Court grants the relief sought by the applicants.

[106] The facts relied on to support this submission are set out in Mr Clarke's affidavit. He says when they received notice of the challenge to the consent in November 2020, approximately 33 per cent of construction had been completed and $1,365,000 spent. If the building had to be taken down, the cost which would be incurred would be over $2,000,000. In addition, he says his contractors had not taken on any new jobs on the basis they would dedicate their time to this project. If work was to cease, this would have a direct financial impact on them.

[107] Finally, the Clarkes obtained expert engineering advice in November 2020, which is before the Court, which says if the Clarkes ceased work in November, there would have been potential structural, financial and environmental impacts. The Clarkes say if any error is established, the gravity of it would be slight in comparison to the financial impact on them if the consent was set aside and the dwelling declared unlawful. They also point out the correspondence they received in November 2020 related to just two of the now five grounds under review. For the applicants to succeed in their submission that the Clarkes were on notice from that point, logically one or both of those grounds would need to be successful.

[108] The Clarkes also point out the circumstances here are very different from those in the cases relied on by the applicants. In *Ririnui v Landcorp Farming Ltd*, the purchaser of the farm was on notice of the potential challenge at the time it entered into the sale and purchase agreement and indeed the terms of the agreement recognised and provided for the risk of such a challenge.[33] In *Murray v Whakatane District Council*, the High Court found the owner "was not in a position to act upon the consent" until three months before the proceedings were filed and there was no

[33] *Ririnui v Landcorp Farming Ltd* [2016] NZSC 62, [2016] 1 NZLR 1056.

suggestion it "altered its position in any way to its detriment" in that time.[34] In *Green v Auckland Council*, the financial cost to the landowner as a result of the relief was $187,000.[35] In *Beach Road Preservation Society Inc v Whangarei District Council*, building work had only just begun and the associated costs were only "in the thousands".[36] Mr Gresson points out that unlike those cases, the Clarkes had incurred significant costs before a challenge was received. He points to cases where the Court has declined relief where there has been real prejudice to the Council or the parties.[37]

[109] In conclusion, Mr Gresson submits that the applicants will suffer a degree of prejudice from not having been able to participate in the consent process. However, when that is measured against the significant impact on the Clarkes, a decision to decline relief should be made.

Discussion

[110] As I indicated to the parties during the hearing, both the Clarkes and the applicants have acted in good faith, and neither has done anything which would have a particular bearing on the exercise of the discretion. I consider the applicants have genuine concerns about the visual impact of the building and acted promptly once aware of what had been authorised by the resource consent. Equally, I do not consider there are grounds to criticise the Clarkes. They acted in good faith in relation to their application for resource consent and had expended approximately $1,300,000 by the time the Clarkes' concerns were raised. Significantly, the issues raised in the 10 November 2020 letter, were not the issues which were subsequently introduced in the litigation and where I have found there was an error.

[111] The Clarkes are well advanced in constructing the building, having now spent $1,500,000 on it, and there would be considerable detriment to them, both in cost and delay, if the Court were to grant the relief sought by the applicants and require the consent to be reconsidered. I do not accept that the lack of evidence on the overall

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34 *Murray v Whakatane District Council*, above n 32, at 321.
35 *Green v Auckland Council* [2013] NZHC 2364, (2013) 17 ELRNZ 737 at [147].
36 *Beach Road Preservation Society Inc v Whangarei District Council* [2001] NZRMA 176 at [56].
37 *Videbeck v Auckland City Council* [2002] 3 NZLR 842 (HC) at [71]; and *John Curtis Developments Ltd v Christchurch City Council* HC Christchurch CP45/01, 26 November 2001 at [25].

financial position of the Clarkes undermines their case. There are inevitable adverse effects flowing from the land use consent being quashed even if the consent is subsequently confirmed on the same or similar terms.

[112] A further consideration is that the primary effects raised are impacts on visual amenity. The house is visible from the applicants' properties, and that is obvious in the photographs produced in evidence, albeit that its visibility is amplified by the significant level of scaffolding erected around the building. Its visibility, and hence its impact on visual amenity, is dependent on the degree of vegetation screening that is required around the property. Had the consent notice requirement been adhered to, requiring vegetation screening to be planted and maintained to prevent the house being visible from the landward 50 metres of the lake's shoreline, it seems inevitable that the visual prominence of the building would be reduced from locations to the west and the north of the building, including the applicants' properties.

[113] In my view, in the particular circumstances of this case, most of the applicants' concerns can be addressed if I limit relief to setting aside the decision cancelling the consent notice. That can then be reconsidered, on the correct basis, which is that it is not the equivalent of site standard r 12.7.5.1(ii)(d).

[114] I do not consider the subsequent boundary adjustment is an impediment to the consent notice being reinstated, and its removal reconsidered. The boundary adjustment simply enlarged what was Lot 60 and reduced what was Lot 61. The obligation to maintain screening for the building on what was Lot 60, but now Lot 2, can still apply, notwithstanding the slight increase in area which has been achieved by the boundary adjustment.

[115] It may well be that the consent notice is cancelled, whether on a notified or non-notified basis, in light of the change of circumstances which has been created by the construction of the Clarkes' residence. However, in that process, consideration can be given to the extent that any alternative proposed (whether through variation of the land use consent condition or implementation of an alternative consent notice) achieves the objectives of the original consent notice condition.

[116] In any event, I reserve leave for the parties to return to the Court should any practical difficulties arise in implementing this aspect of the relief.

Result

[117] In respect of the decision to grant land use consent on a non-notified basis, I make the following declaration:

(a) The limited notification decision on the application for land use consent was made on the wrong legal basis, being that effects of vegetation removal were minor when the requisite statutory test was that the effects were less than minor.

(b) However, in the special circumstances of that case, I decline to grant relief as sought.

[118] In respect of the decision to cancel consent notice 982581.5 on Lot 60 DP 27493:

(a) the notification decision on the cancellation of consent notice 982581.5 on Lot 60 DP 27493 was made in error by assuming the consent notice condition and site standard 12.7.5.1(ii)(d) in the ODP were equivalent provisions;

(b) the notification and substantive decisions on the application to cancel consent notice 982581.5 are quashed;

(c) consent notice 982581.5 is reinstated on the record of title for 28 Briar Bank Drive, being Lot 2 DP 547764;

(d) I reserve leave for the parties to revert to the Court should practical issues arise in implementation of the above decisions.

Costs

[119] I have not heard from counsel on the issue of costs and I reserve the issue of costs.

[120] I record that the applicants have been successful, albeit not on issues that they raised in advance of the litigation with the Clarkes and counsel, and they have been partially successful in obtaining relief. My preliminary view is that they are entitled to costs on a 2B basis. If costs cannot be resolved by agreement, the following timetable will apply:

(a) any memoranda seeking costs is to be filed and served on or before 2 July 2021;

(b) any memorandum opposing costs is to be filed and served on or before 9 July 2021;

(c) any memorandum in reply is to be filed and served on or before 16 July 2021.

[121] Costs will be determined on the papers unless I request to hear from the parties.

Solicitors:
Gallaway Cook Allan Lawyers, Dunedin
Todd & Walker Law, Queenstown

Copy To:
L F de Latour, Queenstown Lakes District Council

Appendix 6 Rural Production Zone – Comparison of Notified Version (Sept 2019) current when original subdivision was granted, and the appeals version (May 2025) relevant to current application.

Deletions in RED, Additions in GREEN

RPROZ - Rural Production Zone

You are currently comparing two versions of the Proposed District Plan - Appeals Version, version Notified version of Proposed District Plan - 22 Sep 2019 (base) with version Proposed District Plan – Appeals Version – Update 9 - 16 May 2025 (compare). Text that is green and underlined (insertions) does not appear in the base version. Text that is red with strikethrough (deletions) appears in the base version, but not the compare version.

OBJECTIVES

Objectives	
RPROZ-O1	Productive land and resources support a range of production oriented and resource dependent activities ~~which are innovative and efficient~~.
RPROZ-O2	The Rural Production Zone is predominantly used for primary production.
RPROZ-O3	The role, function and predominant character of the Rural Production Zone is not compromised by incompatible activities.
RPROZ-O4	~~The~~Maintain the predominant character and amenity of the Rural Production Zone ~~is maintained~~, which includes: 1. extensive areas of vegetation of varying types (for example, pasture for grazing, crops, forestry and indigenous vegetation and habitat) and the presence, of natural features, historic heritage, Māori purpose activities, and large numbers of farmed animals; 2. low density built form with open space between buildings that are predominantly used for agricultural, pastoral and horticultural activities (for example, barns and sheds), low density rural living (for example, farm houses and worker's cottages) and community activities (for example, rural halls, domains and schools); 3. a range of noises, smells, light overspill and traffic, often on a cyclic and seasonable basis, generated from the production, manufacture, processing and ~~/or~~ transportation of raw materials derived from primary production; 4. interspersed existing energy activities and rural industry facilities associated with the use of the land for intensive indoor ~~farming~~primary production, quarrying, ~~oil and gas activities~~ and cleanfills; and 5. the presence of rural infrastructure, including rural roads, and the on-site disposal of waste, and a general lack of urban infrastructure, including street lighting, solid fences and footpaths.
RPROZ-O5	The Rural Production Zone is a functional, production and extraction orientated working environment where primary production and rural industry activities are able to operate effectively and efficiently, while ensuring that: 1. the adverse effects generated by primary production and rural industry activities are appropriately managed; and 2. primary production and rural industry activities are not limited, restricted or compromised by incompatible activities ~~and/~~or reverse sensitivity effects.
RPROZ-O6	Natural features, ~~soil~~highly ~~productivity~~productive land, ~~versatility~~tangata ~~of~~whenua ~~land and~~values, rural character and ~~/or~~ amenity are not compromised by adverse changes to landform, intensification of land use activities (excluding agricultural, pastoral and horticultural activities) and/or ~~,~~ built form, or urbanisation.
RPROZ-O7	Sensitive activities are designed and located to avoid conflict with primary production and avoid, ~~remedy~~ or mitigate adverse reverse sensitivity effects ~~and/or conflict with primary production~~.

POLICIES

Policies	
RPROZ-P1	Allow activities that are compatible with the role, function and predominant character of the Rural Production Zone, while ensuring their design, scale and intensity is appropriate, including: 1. agricultural, pastoral and horticultural activities; 2. residential activities; 3. residential visitor accommodation; 4. Māori purpose activities; and 5. rural produce retail; ~~and~~ 6. ~~petroleum prospecting~~.
RPROZ-P2	Manage activities that are potentially compatible with the role, function and predominant character of the Rural Production Zone and ensure it is appropriate for such activities to establish in the Rural Production Zone, having regard to whether: 1. the activity is ~~compatible~~compatible with the character and the amenity of the rural area; 2. the activity will limit or constrain the establishment and operation of agricultural, pastoral and horticultural activities; 3. the activity will reduce the potential for versatile land to be used for productive purposes and in a sustainable manner; 4. adequate on-site infrastructure and services are available ~~and/~~or can be provided to service the activity's needs; 5. adverse effects can be internalised within the activity's site; and 6. the activity will not result in conflict at zone interfaces. Potentially compatible activities include: 1. community facilities; 2. camping grounds; 3. sport and recreation activities; 4. rural industry; 5. aquaculture; 6. mining; 7. intensive indoor primary production; 8. rural transport activities; 9. quarries; 10. retail activities (except supermarkets, large format retail activities and integrated retail activities); 11. business service activities; 12. commercial service activities; ~~and~~, 13. industrial activities; 14. emergency service facilities; 15. educational facilities (except Māori purpose activities); 16. residential activities associated with Green School at Koru Road; and 17. community corrections activities.

RPROZ-P3

Avoid activities that are incompatible with role, function and predominant character of the Rural Production Zone and/~~or~~ activities that will result in:

1. reverse sensitivity effects ~~and/~~or conflict with permitted activities in the zone; or
2. adverse effects, which cannot be avoided, or appropriately remedied or mitigated, on:
    a. [1]rural character and amenity values;[1]
    b. the productive potential of highly productive soils and versatile rural land.

Incompatible activities include:

1. residential activities (except papakāinga) and rural lifestyle living that are not ancillary to rural activities;
2. retirement villages;
3. visitor accommodation (excluding residential visitor accommodation);
4. supermarkets;
5. integrated retail activities; and
6. large format retail activities~~; and~~
7. ~~educational facilities (except Kōhanga reo).~~

RPROZ-P4

Maintain the role, function and predominant character of the Rural Production Zone by controlling the effects of:

1. building height, bulk and location;
2. setback from boundaries and boundary treatments; and
3. earthworks and subdivision.

RPROZ-P5

Require the effects generated by activities to be of a type, scale and level that is appropriate in the Rural Production Zone and that will maintain rural character and amenity, including by:

1. managing noise and light emissions to an acceptable level, particularly around sensitive activities; and
2. managing high traffic generation activities that compromise the safe and efficient use of the transport network.

RPROZ-P6

Ensure large-scale primary production and rural industry are designed and located appropriately, having regard to:

1. the duration or permanency of the activity;
2. whether the primary access is located on an arterial or collector road or a road designed to provide for anticipated traffic generation;
3. sufficient separation from sensitive activities by distance ~~and/~~or topography to avoid risk to people, property and the environment;
4. whether the activity may compromise any cultural, spiritual ~~and/~~or historic values~~, and interests or associations~~ of importance to tangata whenua, and if so, the outcomes of any consultation with[1] tangata ~~whenua as kaitiaki and mana~~ whenua, including any expert cultural advice provided with respect to mitigation options;
5. the extent of rehabilitation proposed and whether it will result in a net environmental benefit for the immediate area or community ~~and/~~or establish land use appropriate to the area;
6. methods for avoiding adverse effects on ~~identified~~scheduled features~~, including archaeological sites and sites and areas of significance to Māori~~; and
7. minimisation of adverse visual effects through screen planting, building design, siting, and the retention of existing vegetation.

RPROZ-P7

Require sensitive activities to be ~~apropriately~~appropriately located and designed to ~~minimise~~avoid ~~any~~or mitigate reverse sensitivity effects, risks to people, property and the environment[1], and/~~or~~ conflict with activities permitted in the Rural Production Zone, including by:

1. ensuring sufficient separation by distance ~~and/~~or topography between sensitive activities and zone boundaries, transport networks, primary production, significant hazardous facilities and rural industry;
2. adopting appropriate design measures to minimise the impact of off-site effects of rural industry that cannot be internalised within the rural industry activity's site; and
3. utilising landscaping, screen planting or existing topography to minimise the visual impact of rural industry.

RPROZ-P8

Require that buildings and structures associated with large scale activities maintain rural character and visual amenity by:

1. locating buildings away from prominent ridgelines and providing separation between buildings;
2. requiring buildings to be designed to a form and scale that is in keeping with the rural landscape of the area;
3. softening with vegetation related to the area and using appropriate boundary treatments; and
4. minimising adverse visual effects through use of appropriate materials and recessive colours.