Joint Submissions by 8 Freehold Residents

Resource consents SUB24/50201 & LUC24/48662 — Hearing submissions

Executive summary

• Threshold failure: Applicant admits no authority to sign for co-owners (Form 8A Q1(g)); planner recommends decline.

• Property instruments control: Head Lease requires Lessor (freeholder) written consent before any assignment/sublease/parting with possession; Covenants prohibit subdivision without lawful variation; planner recommends decline.

• Implementability (futility): Even leaving environmental effects aside, the application fails because the applicant lacks the property rights needed to exercise the consent. The Environment Court has recognised that a consent that cannot be implemented is futile (Director-General of Conservation v Marlborough DC [2010] NZEnvC 403 at [32]–[36]).

• Amenity and planning integrity: Amenity includes co-ownership and enduring certainty — not just visual effects. Proposal erodes shared land and governance framework; effects are unmitigable and permanent; planner recommends decline.

• Not 'necessary': Engineering alternatives exist within the existing lot — boundary adjustment is a choice, not a need. Cost or convenience is not a valid planning justification.

• Section 106 hazard risk: Geotechnical risk on existing site activates s106 RMA discretion to decline. Boundary shift does not solve risk — it displaces it onto co-owned land and should be declined.

• Legal structure matters: Co-ownership, leasehold, and governance framework are part of the factual environment and directly affect amenity and land use. The application is an attempt to side-step this and should be declined.

1) Threshold defect — lack of landowner authority to apply (Form 8A)

The application itself acknowledges the applicant is not authorised to sign on behalf of the other co-owners of Lot 31 (Form 8A, Q1(g): "*I have the authority to sign on behalf of all other owner/occupiers of the property — No*"). No power of attorney, agency instrument, or unanimous written consent has been produced. On that basis alone, the application should not have proceeded. The Council's reporting planner recognises this proprietary participation gap and treats it as central to the effects analysis and the recommendation to decline.

2) Lease and sublease — 'parting with possession' requires consent (and hasn't been shown)

This lease framework is a separate property-law control, it establishes an independent baseline:

> "*11.2 The Lessee shall not assign sublet or otherwise part with the possession of the premises or any part thereof without first obtaining the written consent of the Lessor [freeholder]…*"
>
> — John Washer Statement Appendix, p201 (Head Lease)

This subdivision/boundary adjustment is a parting with possession that requires freeholder consent. Accordingly, with no written Lessor (freeholder) consents obtained or produced—and proprietary consent being indispensable to any boundary change affecting the co-owned farm land—the proposal cannot lawfully be implemented and should be declined.

In respect of the 2024 sub-lease/variation provided by the applicant, we confirm we've not been asked to provide written freeholder consent for this parting of possession by TCEL. That apparent non-compliance is probative of the Board acting outside legal parameters and it underscores why proprietary consent must be strictly proved for any permanent boundary realignment.

3) Registered covenants and rules — no subdivision without lawful variation

The Residential & Building Covenants include an express prohibition on further division or subdivision.

> "*Dealing with the Land — The Lots shall not be further divided or subdivided...*"
>
> — LINZ Instrument 7890638.42 (Encumbrance), Residential & Building Covenants, copy of this is attached to these submissions

Because of the creation of a new title, a boundary adjustment is considered a subdivision (RMA s218). A boundary adjustment/subdivision cannot be implemented while this covenant remains on title so this application should be declined.

As mentioned by Mr Washer, the Encumbrance and Constitution/Rules do bind owners to the governance framework. However, those internal obligations do not supply authority to alienate freehold or to part with possession without: (1) the registered owners' written consent (Head Lease) and (2) without varying registered covenants (no subdivision). A covenant to comply with governance arrangements is not a blanket power of attorney.

4) Implementability (Futility)

While property rights are not normally central to RMA assessments, they are relevant where they determine whether a consent can actually be exercised. On the evidence here, the consent

could not: the applicant lacks co-owner authority, the lease prohibits parting with possession, and covenants remain. Granting a consent in those circumstances would be futile (Director-General of Conservation v Marlborough DC [2010] NZEnvC 403 at [32]–[36]). Unlike large infrastructure projects where alternative legal pathways may exist, none are available here. By contrast, the applicant's expert accepts an on-lot engineering solution is feasible—so a boundary realignment that appropriates co-owned land is not 'necessary' but unimplementable. The practical result is futility — a consent that cannot be implemented so the application should be declined.

5) Amenity is not just 'access' — it includes co-ownership and enduring enjoyment

The applicant's planner frames Tapuae Estate as a "Farm Park" subdivision. "Farm Park" is a marketing label and private governance framework, not a planning zone or overlay.

Amenity under s7(c) of the RMA includes "pleasantness, coherence, and cultural and recreational attributes" — and this is not limited to immediate visual effects or formal access rights. It includes the long-term certainty of knowing common land will not be reallocated without consent. In Tapuae, that amenity is tied to our status as freeholders of shared land, and to a development pattern that separates residential lots from operational farmland. The "character" of the Estate is built on freeholder ownership with agreed governance of the day-to-day management of common land. If granted, this application weakens the legal basis upon which we purchased.

Amenity in this farm-park context is not confined to day-to-day access. It includes the legal and practical enjoyment of co-owned land and the certainty that common property is not permanently reallocated without the co-owners' agreement. The planner's analysis reflects that reality when he says:

> "*{The} development seeks to permanently adjust the property boundaries which they have a legal right over thereby negatively impacting on their use and appreciation of this land… [amenity] cannot be mitigated.*"
>
> — NPDC s42A Report, p35 [90]

For completeness, the Farm Land Rules actually grant managed access to owners and their invitees, so when John Washer says:

> "*As things presently stand, lot owners are not permitted to lawfully access the part of Lot 32 that will become part of Lot 20 under this application. If the application is granted, lot owners will not be able to lawfully access the 'new' part of Lot 32 either… The only time lot owners may lawfully pass through the farmed balance lot is when they use this track to access the beach.*"

— John Washer Statement, p3

Mr Washer sets out an incomplete picture, the Farm Land Rules say:

> "*2.1 Shareholders shall have access to the Farm Land and use of the Recreational Facilities, subject to the Constitution and these Rules.*"
>
> — JW Statement Appendix, Farm Land Rules, p175
>
> "*8.2 No Shareholder shall fetter, obstruct or impede the use of the Farm Land or any Recreational Facilities by any other Shareholder.*"
>
> — JW Statement Appendix, Farm Land Rules, p178

Mr Washer's statement suggesting owners are "not permitted to lawfully access" the balance lot is therefore overstated. In any event, even if access were constrained, amenity still encompasses our co-ownership and the permanence of losing shared land without consent. We ask the Commissioner to adopt the planner's findings and the recommendation to decline.

6) Engineering alternatives exist — this boundary shift is a choice

> "*Consideration could be given to an enhanced foundation solution for a dwelling within the existing Lot 20 / Site 1 (i.e., deep piles)… [This] would require Specific Engineering Design… This may require [a] hazard notice under the Building Act 2004, s 73.*"
>
> — Red Jacket Expert Statement, p2 [38]

The applicant's own geotechnical expert acknowledges feasible on-title solutions. That removes any 'necessity' argument for taking co-owned land. Cost and convenience are private trade-offs, not grounds to alienate common property. Accordingly, because practicable, on-title engineering solutions exist within this lot, this boundary change is a matter of preference—not necessity—and cannot justify the permanent alienation of co-owned land or the amenity losses identified in the s42A; the application should be declined.

7) Natural Hazard Risk

While the applicant acknowledges ground instability on the existing Lot 20 building platform and proposes engineered solutions, that is not the end of the matter. Section 106 of the RMA gives the Council an independent basis to decline subdivision consent where land is subject to erosion, falling debris, subsidence, slippage, or inundation.

That assessment must be made on the current lot configuration — not a proposed one. If Lot 20 cannot safely accommodate a building platform without crossing into co-owned land, that is a clear signal under s106 that subdivision should not proceed. Retrofitting the lot to avoid natural

hazard risk does not cure the statutory ground for decline. It merely shifts the risk and costs to the common estate; for this reason the application should be declined.

8) Constitution wording re 'ownership' - interpretation

TCEL's Constitution contains wording that could be read as conferring 'ownership' of the Farm Land on the Company. That reading is incorrect and reflects leasehold occupation rights rather than a transfer of title. The legal structure is and always has been: (i) the fee simple in Lots 31–32 (the Farm Land) is held by the owners of Lots 1–30 as tenants in common in equal 1/30 shares; (ii) TCEL holds a leasehold/occupier interest only; and (iii) the Encumbrance binds the residential titles to a governance framework (Constitution/Rules; Covenants). If the company was to be treated as the only owner of the shared land, the developer would not have created this structure. Prior to purchasing and well into ownership many of us were told by Mr Washer repeatedly: "*You own the farm*".

Hierarchy and effect: Registered title instruments prevail. Any Constitution wording suggesting proprietary ownership by TCEL cannot displace the Record of Title or the Encumbrance/Covenants and must be read down as governance language. Real property can only be transferred by registrable instrument and registration; no company constitution can 'deem' ownership into existence or authorise alienation of a dissenting co-owner's freehold share.

Practical consequence: Regardless of the papers submitted by the company purporting to be the owners of the farm land (letter dated 5 November 2024 at pg 9 of the Application), the Commissioner should place no weight on any argument that TCEL 'owns the farm' for the purposes of conferring authority to sign subdivision instruments. Authority flows from the registered proprietors (each 1/30 freeholder) or from a valid power of attorney they have executed, or from a High Court order. This reflects the structure the developer created and is now bound by.

The applicant's planner suggests that property rights are outside the scope of planning, and that "ownership" issues should not factor into amenity effects. That is not correct.

The effects of a proposal under s104(1)(c) of the RMA include "*any other matter the consent authority considers relevant and reasonably necessary to determine the application.*" The leasehold structure, co-ownership, and governance rules form the factual environment in which planning decisions are made. These features determine how the land is used, how it is accessed, and how its amenity is experienced in practice.

Where a proposal undermines these structures — by reallocating land held in co-ownership or disregarding lease obligations and covenants — it directly impacts amenity, trust, and the integrity of the development. These are valid planning considerations.

9) Affected Persons Approvals, Allegations of Encroachment(s)

The applicant relies on Affected Persons Approvals (APAs) to suggest that adverse effects are minor or that neighbours support the application. That is a misunderstanding of how APAs function.

APAs are relevant to notification decisions under s95E. Once a hearing is triggered, the weight of submissions must be evaluated based on the substance of effects, not the number of signatures. The Council must assess all relevant effects under s104 — including those raised by submitters who may not live directly adjacent.

The APA of Lot 19 (a nearby lot) does not displace the planning analysis. Nor do more distant submitters become irrelevant. Their concern is not just visual, but structural — that shared property can be eroded without consensus. That concern relates directly to amenity, the effectiveness of the governance framework, and the precedent risk for future applications.

Mr Washer's statement implies that opposition to the application stems from unrelated grievances or encroachment disputes. That is unfounded and inappropriate.

Submitters have raised concrete, planning-relevant concerns: the unauthorised taking of common land; failure to obtain co-owner consent; loss of amenity and certainty; and the integrity of the governance framework. These are valid matters under ss 104 and 106 RMA.

Even if the issues raised have wider context, that context enhances their significance — it shows how piecemeal changes erode trust, certainty, and long-term coherence in a unique co-owned subdivision. The Commissioner should treat these concerns as planning effects, not personal tactics. The correspondence in Mr Washer's statement demonstrates how the community has tried to find pathways for the Washers to obtain our consent; these pathways remain largely unexplored by the applicant. The council should decline the application until these matters have been resolved and the requisite consents obtained.

10) Remedies and relief

A material proportion of the TCEL Board comprises immediate family of the applicant, this presents an apparent conflict of interest. Any reliance on TCEL stances (e.g., a purported 'no objection', any delegation, or support for sub-leasing) should be treated with caution and cannot substitute for the written consent of each registered proprietor or for lawful variation/discharge of covenants and lease restrictions.

Given the threshold authority failure, the lease/sub-lease consent requirements, and the registered covenants, We respectfully adopt the planner's recommendation: decline.

In the alternative (if consent were contemplated), no certification under s223/s224 should issue unless and until the applicant produces written consent from every registered freeholder of Lot 31 and registrable instruments varying or discharging the relevant covenants/lease restrictions.

10) These submissions are supported by the following residents:

Section 2	Philip Pryde and Robin Marshall
Section 13	Richard and Lorette Rayner
Section 14	Brent and Maree Schumacher
Section 15	Brenda Moore
Section 19	Maria Vosper-Rink
Section 22	Steve and Fiona Frowde
Section 23	Patrick Cameron and Randy Buckley
Section 24	Jimmy and Denise Seed