

SUBMITTERS' DOCUMENT BUNDLE

SUB24/50201.01 — Consent Notice Variation, Tapuae Country Estate

Applicant: Washer Family Trust Limited

Site: 1 and 9 Washer Road, Omata, New Plymouth

Legal description: Lot 20 and Lot 31 DP 385658

Commissioner: Independent Commissioner Mark St Clair

Hearing: 16 June 2026 — NPDC Civic Centre, New Plymouth

Submitters: Joint Submitters — Patrick Cameron and Randy Buckley, on behalf of the freehold owners listed at Tab 11

Preparation note

This bundle has been prepared by the joint submitters to assist the Commissioner. Tabs 1–5 originate from the prior proceeding SUB24/50201 and are relied upon in the submitters' response submissions. Tab 6 is the joint witness statement filed 12 June 2026. Tabs 7–10 are the title and instrument record. Tabs 11–12 are the submitters' filed submissions. Tabs 13–14 are the independent legal advice and the Commissioner's Minute #8 from the prior proceeding.

Not reproduced (on the file)

s42A report (ECM 9800856); NPDC clarification memo (ECM 9803695); variation application (ECM 9632775); Commissioner's Minutes 1–7; applicant's submissions dated 1 October 2025; applicant's further submissions (ECM 9632778).

Index of documents

Tab	Document	Author / Source	Date
1	Expert Geotechnical Statement of Kristel Franklin	Red Jacket Ltd	17 Sep 2025
2	Engineering Report — RPT-4317-A-01 Rev A	Red Jacket Ltd	Nov 2021
3	Engineering Report — RPT-4317 Rev B	Red Jacket Ltd	12 Jul 2021
4	Desktop Assessment — Job No. 1018457	Tonkin & Taylor Ltd	28 Sep 2021
5	Scheme Plan W-211212-RC01, Sheet 2	McKinlay Surveyors	27 May 2024
6	Joint Witness Statement (Robinson & Rendall)	Future Proof Planning / Landpro	12 Jun 2026
7	Record of Title — Identifier 342942	LINZ	7 Jul 2025
8	Consent Notice 7890638.35	NPDC / LINZ	29 Jul 2008
9	Consent Notice 7890638.24	NPDC / LINZ	29 Jul 2008
10	Encumbrance 7890638.42	LINZ	29 Jul 2008
11	Joint Submitters' Submission	P. Cameron, for 8 freehold owners	Feb 2026
12	Submission	E. Bennett-Lawn & J. Lawn	Feb 2026
13	Independent Legal Advice	Duncan Laing	14 Oct 2025
14	Commissioner's Minute #8	Commissioner M. St Clair	18 Nov 2025

TAB 1

Expert Geotechnical Statement of Kristel Franklin

Red Jacket Ltd · 17 September 2025

Filed in prior proceeding SUB24/50201

Locator references

- [14] — horizontal distance from the gully head recorded as approximately 4m (Site 1) and approximately 24m (Site 2).
- [21] — records that the conclusions in RPT-4317-A-01 Rev A “remain valid”.
- [29]–[33] — geotechnical review of Site 1 and Site 2.
- [33] — Site 2 assessed as “good ground”; states no mitigation measures required at Site 2.
- [36]–[41] — comments on the s42A report, including the s106 assessment.
- [42]–[44] — conclusion.

Before New Plymouth District Council

Independent Commissioner Mark St Clair

IN THE MATTER of an application for resource consents LUC24/48662 and SUB24/50201 1 and 9 Washer Road, Omata

Washer Family Trust Limited

Applicant

EXPERT GEOTECHNICAL STATEMENT OF KRISTEL FRANKLIN

I, KRISTEL FRANKLIN, OF RED JACKET LIMITED, SENIOR ENGINEERING GEOLOGIST, SWEAR:

INTRODUCTION AND QUALIFICATIONS

- 1.** My full name is Kristel Franklin.
- 2.** I am employed as a Senior Engineering Geologist at Red Jacket Limited (“**RJL**”), in New Plymouth.
- 3.** I hold the qualifications of MSc (Hazard and Disaster Management), BSc (Geology). I am a Chartered Member of Engineering New Zealand and a Professional Engineering Geologist (PEngGeol).
- 4.** I have over 20 years’ experience in geotechnical engineering within New Zealand, including 12 years’ experience in the Taranaki region.
- 5.** My practice area is in geotechnical engineering with a particular focus on natural hazard risk assessments, geotechnical investigations, foundations and earthworks design.
- 6.** This evidence is given in support of the boundary adjustment and land use consent application (“**the application**”) lodged by the Washer Family Trust Ltd (“**the applicant**”), at 9 Washer Road in terms of geotechnical matters.
- 7.** I am authorised to give this evidence on behalf of the applicant.

BACKGROUND AND CONTEXT

8. The applicant seeks a subdivision consent to make a boundary adjustment between two existing lots; and a land use consent for the ability to locate dwellings/structures within side yard setbacks.
9. The subject site includes Lot 31 and Lot 20 on the Tapuae Country Estate. Lot 20 is also referred to in correspondence relating to this matter by its street address, 9 Washer Road. These lots comprise parts of the Tapuae Country Estate, a rural-residential development between the suburbs of Oakura and Omata. Tapuae Country Estate was created in 2008 and includes 30 rural-residential allotments set amongst balance allotments, held in common ownership and used for rural production and common recreation purposes.
10. A Scheme Plan, prepared by New Plymouth's McKinlay Surveyors, of the Tapuae Country Estate showing individual dwelling development lots and the balance farm lots is provided in Appendix A, which is included in the current application documentation (LP, Page 54).¹
11. Lots 31 and 32 DP 385658 are the farm balance lots of the Tapuae Country Estate.
12. Existing Lot 20 DP 385658 (9 Washer Road) is presently an undeveloped rural-residential allotment. The allotment is fully fenced and includes a portion of vegetated gully on its northern western margin.
13. RJL has previously assisted the applicant in relation to 9 Washer Road. In July 2021 RJL investigated the original building platform's viability ("Site 1") following land instability associated with the head of the gully. RJL subsequently completed shallow geotechnical testing in October 2021 across an alternative building location area ("Site 2"). The

¹ In this statement, unless otherwise stated, where a page reference is provided in parenthesis, it is to the "9 Washer Road - Washer - Lodgment Package" Resource Consent Application filed by Chris Rendall on 14 November 2024. So: LP-Page 1 would refer to the first page of the lodgment package.

reports associated with the investigations are included in the application documentation (LP, Pages 59-110).

14. The application aims to relocate the existing building platform from Site 1 to Site 2 to provide a stable building platform. The horizontal distance from the head of the gully is approximately 4m for Site 1, compared to approximately 24m for Site 2.

INVOLVEMENT IN THE PROJECT

15. RJL's involvement in the application in terms of geotechnical matters has included:

- (a) As referred to in Item 13 (LP, Pages 59- 110), RJL has completed an 'Engineering Report - Building Platform Investigation' in November 2021 (reference RPT-4317-A-01 REV-A). The report appended two previous reports relevant to the current application, as outlined below:

- (i) Tonkin + Taylor Ltd, September 2021. Desktop assessment for proposed residential development at 9 Washer Road, Omata (reference 1018457).
- (ii) Red Jacket Ltd, July 2021. Engineering Report, Building platform, 9 Washer Road, Tapuae (reference RPT-4317 REV-B).

METHODOLOGY AND INFORMATION CONSIDERED

16. In preparing this evidence, and in addition to the report referenced in [15], I have also reviewed the following documents produced with the application, including:

- (a) McKinlay Surveyors, Job No. W-211212, Drawing No. RC01, Sheets 1 and 2, dated 27 May 2024, which details the proposed boundary adjustment.
- (b) Landpro Ltd, July 2024. Resource Consent Application to New Plymouth District Council.

17. I have considered the implications of both Sites 1 and 2 in terms of Section 106 of the Resource Management Act 1991 (“**RMA**”), and Sections 71 and 72 of the Building Act 2004, which relates to natural hazards.
18. I have reviewed submissions from those notified of the application that raise concerns relevant to my field of expertise.
19. I have relied on a review of previous reports, available aerial photography, cross-sections and measurements of the slope instability and my own knowledge of active slope processes.

CODE OF CONDUCT

20. I confirm that I have read the Code of Conduct for expert witnesses contained in the 2023 Environment Court Practice Note and that I agree to comply with it. I confirm I have considered all the material facts that I am aware of that might alter or detract from the opinions I express. In particular, unless I state otherwise, this evidence is within my sphere of expertise, and I have not omitted to consider material facts known to me that might alter or detract from the opinions I express.

PURPOSE AND SCOPE OF EVIDENCE

21. RJL confirms it has read the submissions on the Application relevant to its expertise and the Council Planners’ Section 42A Report (“**planner’s report**”). The assumptions, assessment and conclusions set out in the RJL report reference RPT-4317-A-01 REV-A remain valid.
22. Except where my evidence relates to contentious matters, I propose to only summarise the conclusions set out in RJL report reference RPT-4317-A-01 REV-A.
23. My evidence is structured as follows:
 - (a) Summary [24]-[25];
 - (b) Geotechnical Review [26]-[33];
 - (c) Response to Submissions [34]-[35];
 - (d) Comments on the Planner’s Section 42A Report [36]-[41]; and

(e) Conclusion [42]-[44].

SUMMARY

- 24.** The key engineering related issues within my expertise in my opinion is the suitability of the Site 1 and proposed Site 2 following a boundary adjustment for residential development in terms of Section 106 of the RMA (1991) and Sections 71 and 72 of the Building Act (2004) that relates to natural hazards.
- 25.** By way of a summary, my detailed analyses and assessments enable me to confidently conclude that:
- (a)** The risk of natural hazards (slippage) impacting the current building platform within Site 1 is currently assessed as high. Earthworks would be required, and associated engineering design for a retaining wall or shear key and buttress to mitigate the risk to an acceptable level. A shear key would involve an excavation at the base of gully slope to act as toe support for imported fill to reinstate land (buttress) that has slipped to a stable configuration.
 - (b)** A stable building platform can be created by relocating the building platform, which necessitates adjusting the current legal property boundary.
 - (c)** Relocating the building platform to stable land will avoid environmental impacts and permanent landscape modification. These permanent impacts and modifications would be required for an engineered solution to enable the existing site to have a stable building platform. Impacts of earthworks to the gully would not be fully realised until works are in progress.
 - (d)** ‘Health and Safety by Design’ considerations are required in all engineering design projects.² which in this case the process of

² Health and Safety at Work Act 2015, ss 30, 39-43. See also: Practice Note 4: Health and Safety by Design (Engineering New Zealand, April 2023) <https://d2rjvl4n5h2b61.cloudfront.net/media/documents/PN04_HealthSafety_by_Design.pdf>

managing health and safety risks is best achieved by moving the building platform to a stable area.

GEOTECHNICAL REVIEW

- 26.** A review of the suitability of the land in terms of geotechnical matters relating to Site 1 (existing) and Site 2 (proposed boundary adjustment area) has been undertaken by RJL.
- 27.** Available historical aerial photography indicates that aside from plantings on the slope (gully feature), no other visible modifications or earthworks directly associated with the gully have occurred to date. The landslide that initiated in 2012 is considered a natural process in response to climatic conditions that is typical in the region.
- 28.** Land instability is becoming more prevalent as the frequency of long duration and high intensity rainfall events increase. This is in conjunction with increasing demand for new residential developments. Seismicity is also a factor to account for in slope stability assessments.

Site 1

- 29.** Both RJL and Tonkin + Taylor Ltd reporting referenced above in Section 15 (LP, Pages 59-110), assess that if a dwelling as presently consented were built at Site 1, in the absence of detailed geotechnical investigations, analysis and design of slope stability mitigation works the risk of material damage to land and structures within Site 1 is unacceptably high.
- 30.** RJL concludes the gully head's rate of regression at Site 1 is difficult to predict. Because Site 1 is presently located <5m from the gully head, I assess that the likelihood of slope regression within the designed life of a residential structure (50 years) is high. The consequences of this slope regression to life safety and material damage to land and property is not tolerable.
- 31.** Possible alternatives to retain the building platform in Site 1 and reduce the risk profile could be facilitated by engineering works. This could include construction of an engineered retaining wall, or shear

key/buttresses. Both engineering options would require substantial earthworks to create access for machinery to the base of the steep slope in question. The machinery would then need to undertake permanent modification of the gully feature.

32. Drainage is a key consideration in controlling slope stability. The assessment by RJL to date is that groundwater seepage is likely occurring within the transition between the volcanic ash layer and underlying Maitahi Formation deposits (LP, Page 91). The hydrogeological model would require confirmation to determine the impacts of engineering options for slope stability mitigation and associated potential downstream effects.

Site 2

33. Site-specific shallow geotechnical testing within Site 2 by RJL in October 2021 identified ground conditions assessed as suitable for residential construction (in general accordance with New Zealand Standard (NZS) 3604:2011, Timber-framed buildings). This means Site-2 is “good ground” for a building platform. In addition, RJL specifically assessed slope stability due to the offset to the gully head generated by the boundary adjustment. RJL’s geotechnical testing assessed that no mitigation measures are required to address natural hazards at Site 2.

RESPONSE TO SUBMISSIONS

34. I have read the submissions made by lot owners that have been made in relation to the application. I address and respond as follows to the two submissions made addressing the land instability. However, my opinion is applicable in relation to all submissions expressing any concern regarding the application.

- (a) **Submission of Denise Seed, 24 Washer Rd:** Reference is made to a piece of land with a major slip in comparison to the area of the proposed boundary adjustment (i.e., Site 2) that does not have a slip.

My Expert Response: For context, I have assessed the risk of slippage to Lot 31 in comparison to the existing Lot 20.

To assess 'risk' (in this case of slippage), the likelihood and consequence of the natural hazard requires consideration. As outlined in my evidence, the risk of slippage is assessed as high for Lot 20 due to the high likelihood and major consequences of slippage directly impacting a future building platform.

Conversely, the risk of slippage to Lot 31 would impact <1% of the total land area and not have any measurable impact in terms of geotechnical constraints for continued agricultural purposes.

The gully is a natural feature and the instability that occurred would have likely initiated irrespective of development within Lot 20.

The aim of the boundary adjustment is to enable a safe building platform for residential construction and avoid earthworks for an engineered design/land modification.

(b) Submission of Barbara Cameron and Deborah Williams, 21 Washer Rd.

My Expert Response: My response to concerns raised in this submission regarding the land instability are similar to those outlined above in [34(a)]. The slope instability observed is a natural process. When the natural process (gully head regression) is considered in the context of Tapuae Country Estate's land, the effects on continued use for agricultural purposes across Lot 31 are assessed as negligible. The same cannot be said for the effects (of gully head regression) on a building platform (Site 1) within 5m of the crest of the slope. From a geotechnical perspective, the scope and extent of earthworks associated with slope remediation is not considered commensurate with the boundary adjustment option that would result in an already stable building platform.

35. I do not need to vary my expert assessment in light of the submissions received.

COMMENTS ON THE PLANNER'S SECTION 42A REPORT

36. Because they within my area of expertise, I address the following items in the Planner's Section 42A report.
37. **I first address the Planner's assessment of positive environmental effects:**

Item 34: *"... the applicant has asserted that without the subdivision, a dwelling cannot be built on existing Lot 20. This assertion relies on reports dated 2021 and 2025 by Red Jacket and a report from 2021 by Tonkin and Taylor. Whilst I have no reason not to accept the findings of the engineering reports, the applicant hasn't provided any further information as to what other options could be explored to build on existing Lot 20 without the for either land use of subdivision consent"*

(Planner's s 42A report, 10 September 2025 at page 14, [34]).

38. **My Expert Response:** In addition to the detail provided in [29] to [32] of my expert statement, consideration could be given to an enhanced foundation solution for a dwelling within the existing Lot 20 / Site 1 (i.e., deep piles). An enhanced foundation would require Specific Engineering Design and detailed slope stability analysis. As the land intimately connected to the building work would remain subject to natural hazards. This may require an entry on the record of title (hazard notice) under the Building Act 2004, s 73. for the existing Lot 20. Implications of a hazard notice can influence the insurability of a future dwelling (i.e., no insurance or higher premiums) and decrease the property value. The application's purpose is to avoid the natural hazard, and not accelerate or worsen an existing natural hazard, as required under the Building Act (2004, ss 71 and 72). Further engineering solutions on Site 1, to enable a viable building platform, in my expert opinion will likely worsen an existing natural hazard.

39. Regarding the Planner's RMA, s 106 assessment of particular considerations for subdivision:

Item 85: *"There is no reason to decline this application under Section 106 of the RMA given:*

- *The part of the application sites to be adjusted is the not subject to any known significant natural hazards; and*
- *Provision has been made for legal and physical access to all lots via the existing road network."*

40. My Expert Response: I agree that the area of Lot 20 following the proposed boundary adjustment is not subject to any known significant natural hazards. In terms of the residual risk of land instability to Lot 31, in my expert opinion, I do not consider that there is an unacceptable risk to the 56.05 hectare Lot 31 incorporating the 1,507m² western portion of the existing Lot 20, if the boundary adjustment proceeds.

41. I do not need to vary my expert assessment in light of the Section 42A report.

CONCLUSION

42. In my opinion, the proposed activity facilitates construction of a dwelling on Lot 20, and is commensurate with the intent of the original subdivision consent.

43. The balance lot will not be burdened by the consents' grant. The incorporation by Lot 31 of 1,507m² from Lot 20, does not increase the overall risk that Lot 31's land will become unstable.

44. No geotechnical constraints are presented by the application for Lot 31's continued use as agricultural land.

Dated 17 September 2025



Kristel Franklin

TAB 2

Engineering Report — Building Platform Investigation (RPT-4317-A-01 Rev A)

Red Jacket Ltd · November 2021

Within ECM 9383904 (Document Set ID 9383904)

Locator references

- Figure 1-2, p.5 — KR Architecture site plan annotated “40m MIN OFFSET FROM TOP OF BANK”.
- Table 3-1, p.8 — engineering schedule; building to be positioned “at least 40m from the top of the gully at the closest point”.
- Section 2 — Site 2 subsoil testing (October 2021); classified as “good ground”.

See also Tab 5 and Tab 6.



ENGINEERING REPORT

BUILDING PLATFORM INVESTIGATION

9 WASHER ROAD, OMATA

FOR WASHER FARMS LTD

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RPT-4317-A-01 Engineering Report

CLIENT: Washer Farms Ltd
PROJECT TITLE: Building Platform Investigation
DOCUMENT NUMBER: RPT-4317-A-01 REV-A

Issue	Description	Date	Prepared By	Checked By	Approved
A	CONSENT	Signature	A Manjali	A Fraser	
		Date	Nov' 2021	Nov' 2021	
		Signature			
		Date			
		Signature			
		Date			
		Signature			
		Date			
		Signature			
		Date			

Report Prepared by:



Antony Manjali
Civil Engineering Technician

Reviewed by:



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RPT-4317-A-01 Engineering Report

TABLE OF CONTENTS

1. INTRODUCTION.....4
1.1 Existing Site Description 5
2. SUBSOIL INVESTIGATION.....6
2.1 Boreholes..... 7
2.2 Scala Penetrometer Testing 7
3. ENGINEERING SCHEDULE.....8
3.1 Standard Notes..... 9
4. LIMITATIONS9

Table of Tables

Table 2-1: Typical Borehole Log Summary..... 7
Table 3-1: Engineering Schedule..... 8

Table of Figures

Figure 1-1: Tonkin + Taylor Report Extract 4
Figure 1-2: KR Architecture Site Plan extract..... 5
Figure 2-1: Test Location Plan..... 6

Table of Photographs

Photo 1: Site Looking East and North-east..... 11
Photo 2: Site Looking at the Vegetated Gully (to the West and North-west)..... 11
Photo 3: Site Looking at Slope Crest at the Gully Head..... 12
Photo 4: Site Looking South-east 12
Photo 5: Site Looking West..... 13
Photo 6: Site Looking North-west..... 13
Photo 7: Site Looking at Topsoil at Test location 2 with Well Graded River Stone..... 14
Photo 8: Site Strip Carriage Way Showing Riverstones/ Gravels in Topsoil..... 14

RPT-4317-A-01 Engineering Report

1. INTRODUCTION

We have reported on the suitability of a proposed residential building platform within the existing rural residential Lot located at 9 Washer Road, Tapuae Estate, legal description Lot 20, DP 385658.

Previous assessments of the site have been conducted by Red Jacket, report dated 12th July 2021 and Tonkin & Taylor Report dated 28th September 2021 as in Appendix D and Appendix E.

This report focuses on the proposed building platform as reported by Tonkin & Taylor within the blue hatched area indicated as Site 2 in Figure 1-1 below.

Further detail of the site assessment is provided below refer to Section 3 for the Engineering Schedule outlining building platform restrictions.

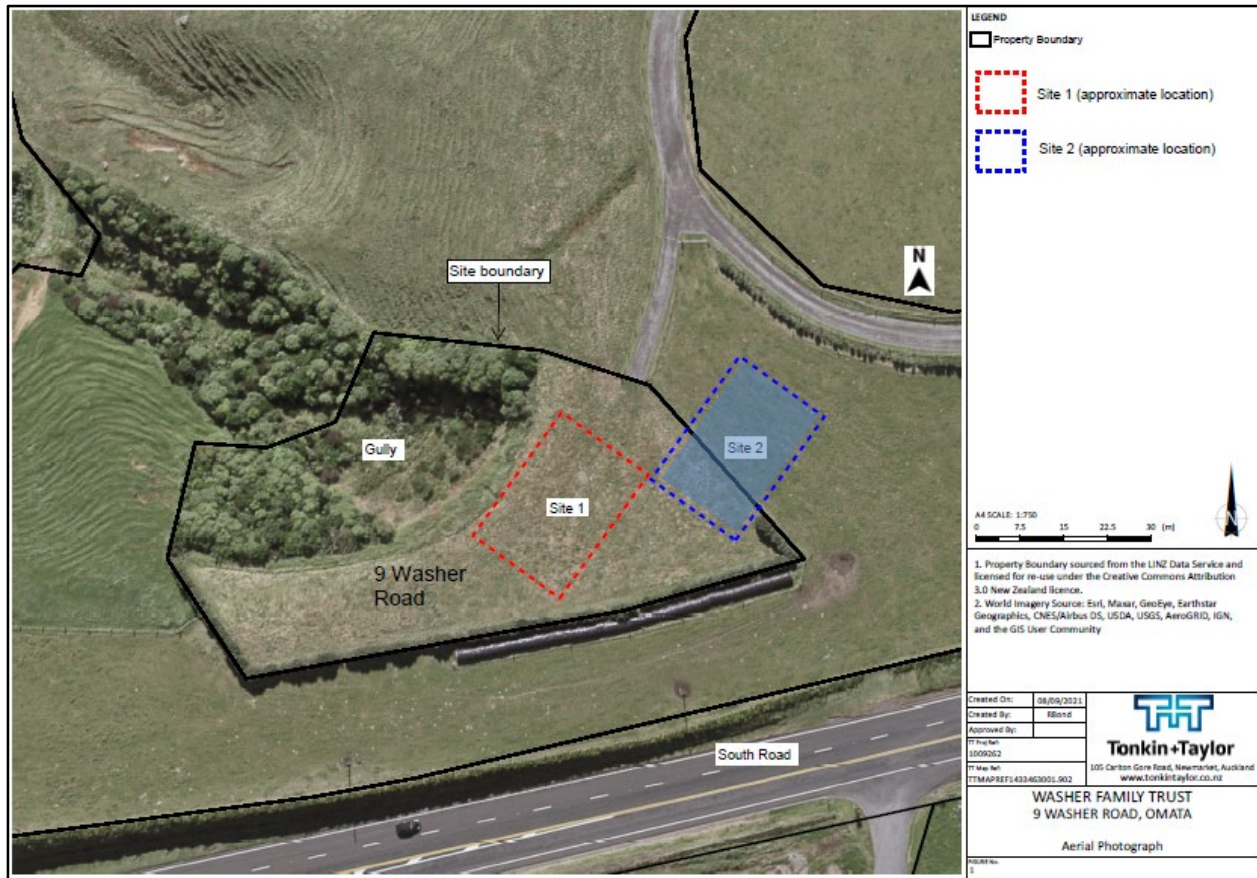


Figure 1-1: Tonkin + Taylor Report Extract

RPT-4317-A-01 Engineering Report

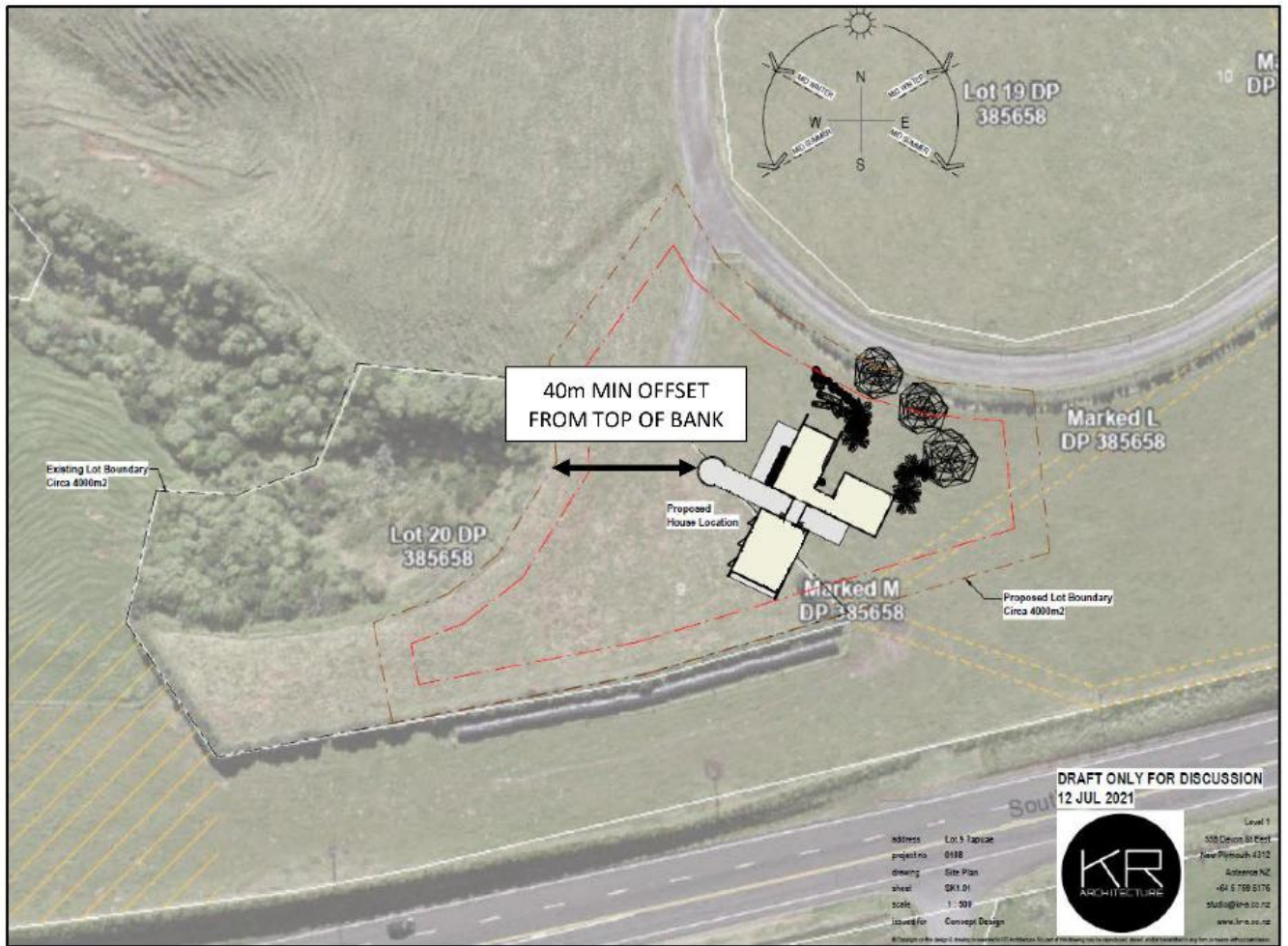


Figure 1-2: KR Architecture Site Plan extract

1.1 EXISTING SITE DESCRIPTION

The Existing 0.40 Ha Lot is located on the southern side of Tapuae Estate Subdivision along Washer Road. The Lot is currently accessed via shared Right of Way from the north-east, which adjoins to Washer Road. The KR Architecture Site Plan of the proposed Lot boundary and site plan is in Figure 1-2 and Appendix C.

The Tapuae Stream and the Tasman Sea are situated approximately 250 m and 600 m to the north-western boundary, respectively.

The proposed building platform is located on a grassed paddock that gently slopes down towards the west at a 5% gradient approximately. The site ultimately falls into a near-vertical vegetated gully near the north-western boundary. Refer to Tonkin + Taylor Report in Appendix C on a detailed assessment of the existing gully and refer to Red Jacket Report in Appendix D for historic aerial images of the gully.

Based on NPDC GIS contours, the ground to the north-eastern portion of the building platform rises towards the neighbouring residential Lot to the north-east at a 15% gradient approximately.

The proposed building platform is surrounded by mixed general farmland and lower and upper-level Residential Lots.

Photos of the site are provided in Appendix B.

RPT-4317-A-01 Engineering Report

2. SUBSOIL INVESTIGATION

The subsoil investigation for the proposed building platform was completed on the 21st of October 2021 and consisted of three scala penetrometers and three hand augured boreholes.

The tests were conducted within the proposed building platform area as recommended in Tonkin + Taylor report, refer to Section 4.2 within Appendix D.

The test locations are shown in Figure 2-1 and the results are provided in Appendix A.



Figure 2-1: Test Location Plan

RPT-4317-A-01 Engineering Report

2.1 BOREHOLES

Hand augered boreholes were undertaken at all test locations 1, 2, and 3 to a maximum depth of 4.0 m below ground level, bgl. A general summary of borehole logs is shown in Table 2-1 below and full borehole logs are provided in Appendix A.

The general soil summary indicated the subsoils consisted of TOPSOIL 0.2 m thick at test locations 1, 2, and 3, overlying a brown sandy SILT (Taranaki Volcanic Ash).

Test location 2 indicated that the TOPSOIL layer had well-graded river stones and gravel inclusions. This appeared to continue in a carriageway strip to the north and south of the proposed building platform. Refer to Figure 2-1 for indicative location.

The groundwater table was not encountered during testing at any locations.

Table 2-1: Typical Borehole Log Summary

Depth (m)	Soil Description	Shear Capacity	
		(Depth)	(kPa)
0 – 0.2	TOPSOIL, black	-	-
0.2 – 1.9	Sandy SILT, brown, firm, dry, low plasticity. (Taranaki Volcanic Ash)	0.5 – 1.5	Greater than 100 kPa
1.9 – 2.2	Sandy SILT with some coarse sand, orange-brown, iron-oxide staining, moist, low plasticity. (Taranaki Volcanic Ash)	2.0	Greater than 100 kPa
2.2 – 4.0	Sandy SILT, brown, firm, moist, plasticity increasing with depth. (Taranaki Volcanic Ash)	2.5 – 3.0	Greater than 100 kPa

2.2 SCALA PENETROMETER TESTING

Scala penetrometers were undertaken at all test locations to a maximum depth of 6.0 m bgl.

Test location 2 generally indicated 2 – 3 blows for 100 mm for the first 1.4 m bgl, beyond this depth the results generally indicated 5 – 12 blows per 100 mm until 2.8 m bgl.

Test location 3 generally indicated 2 – 4 blows for 100 mm for the first 1.6 m bgl, testing beyond 1.6 m bgl typically indicated 6 – 8 blows per 100 mm until 3.6 m bgl.

Test location 1 was hand augered until 4 m bgl, scala penetrometer testing commenced at the base of the hand augered borehole. Testing generally indicated 2 – 5 blows between 4.0 m and 5.2 m bgl, testing between 5.2 m and 6.0 m generally indicated 5 – 9 blows per 100 mm.

RPT-4317-A-01 Engineering Report

3. ENGINEERING SCHEDULE

Table 3-1: Engineering Schedule

Site	Building Platform Requirements	Stormwater Requirements & Overland Flow Paths	Wastewater Requirements
<p style="writing-mode: vertical-rl; transform: rotate(180deg);">Lot 20, DP 385658 9 Washer Road, Tapuae Estate, New Plymouth</p>	<p>Specific Engineering Design for Foundations is not required for this Lot provided our requirements are complied with.</p>	<p>Specific Engineering Design for Stormwater disposal is not required for this Lot.</p>	<p>Specific Engineering Design for Wastewater disposal is not required for this Lot.</p>
	<p>The site subsoil conditions generally meet the strength requirements as outlined in NZS 3604:2011 ‘Good Ground’ meaning ‘any soil or rock capable of permanently withstanding an ultimate soil bearing capacity of 300 kPa, being an allowable bearing pressure of 100 kPa using a factor of safety of 3.0’.</p> <p>Therefore, this material is suitable for supporting residential buildings with conventional foundations or RibRaft foundations. Refer to notes 1 and 2 below.</p> <p>The proposed building platform shall have the following requirements:</p> <p>(a) The building shall be positioned as shown on the attached drawing being at least 40m from the top of the gully at the closest point.</p> <p>If the building platform location differs from the layout shown in this report, the building platform will need to be re-assessed by a suitably qualified engineer.</p> <p>(b) The stripped subgrade must be inspected and approved by a suitably qualified engineer.</p>	<p>The site is suitable for on-site disposal of stormwater by conventional soakage. Refer to note 3.</p> <p>Being in a rural environment, roof stormwater run-off may be collected and stored via storage tanks.</p> <p>An overflow discharge to land from the potential storage tanks is deemed appropriate for this site, provided that the overflow is discharged to existing overland flow paths and is compliant with NZBC E1 in regard to avoiding the likelihood of damage or nuisance to downstream property.</p> <p>Care should be taken during the final landscaping of the site to ensure secondary overland flow is away from the proposed building platform and neighbouring buildings.</p> <p>The stormwater overflow from conventional soakage systems or storage tanks or any discharge direct to ground shall be directed away from the gully so to avoid exacerbating any erosion associated with the gully formation.</p>	<p>The site is suitable for the on-site disposal of wastewater by a conventional wastewater field. Refer to note 4 below.</p> <p>This system shall be designed in accordance with AS/NZS 1547 and shall be designed by a suitably qualified person.</p> <p>Notes:</p> <p>(a) Consideration shall be given to the final orientation and location of the wastewater field in relation to the river stones/gravels outlined in Figure 1-2 above.</p>

RPT-4317-A-01 Engineering Report

3.1 STANDARD NOTES

1. Where “conventional foundations” is stated in the Table above, this refers principally to foundations complying with NZS 3604. The foundation types under NZS 3604 include concrete slab-on-grade floors and timber floor on timber piles.
These foundation types should be excavated into original good ground subject to confirmation at the time of a Building Consent.
Alternative foundation systems shall be provided as a specific engineering design.
2. Where “RibRaft foundations” is stated in the Table above, this refers to proprietary “rib-raft” floors with blocks of insulation between concrete ribs and shall be designed & constructed following Firth RibRaft Technical Manual October 2018 Rev A or other approved proprietary design.
3. Where “conventional soakage systems” is stated in the Table above, this refers to soak holes or soakage trenches that are drilled into the volcanic ash subgrade to service a new residential building. Stormwater from roofs can be piped to storage tanks for residential use with overflow directed to soakage. The number, proportions of the soakage system and suitability of the soak hole wall shall be determined by a suitably qualified person in accordance with NZBC E1. Soakholes are to be located 3.0m from dwellings and 1.5m from boundaries.
4. Where “conventional wastewater field” is stated in the Table above, this refers to an on-site wastewater disposal system designed to the requirements given in AS/NZS 1547 for the on-site disposal of wastewater using primary treatment trenches or beds. The wastewater field should be located in existing original volcanic ash and is subject to selecting the final location with suitable falls. The wastewater field is to be located 25m from any watercourse, wetland areas or cliff tops and 50m from any well or bore.

4. LIMITATIONS

This report is prepared for your use and for your agents for the stated purpose and cannot be used for any other purpose or by others unless authority is given by Red Jacket.

TAB 3

Engineering Report — Building Platform (RPT-4317 Rev B)

Red Jacket Ltd · 12 July 2021

Within ECM 9383904

Locator references

- Section 3, p.7 — building platform assessment; pile foundations and retaining-wall options discussed.
- Section 4, p.8 — summary and recommendation; alternative options (a) further back towards the highway, (b) sideways to the north.



ENGINEERING REPORT

BUILDING PLATFORM

9 WASHER ROAD

TAPUAE

FOR WASHER FARMS LTD

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RPT-4317 Engineering Report 9 Washer Road TAPUAE

CLIENT: Washer Farms Ltd
PROJECT TITLE: Building Platform

DOCUMENT NUMBER: RPT-4317 REV-B

Issue	Description	Date	Prepared By	Checked By	Approved
A	REVIEW	Signature	A Fraser		
		Date	06/07/21		
B	FOR USE	Signature	A Fraser	G Sarich	
		Date	12/07/21	12/07/21	
		Signature			
		Date			
		Signature			
		Date			
		Signature			
		Date			

Report Prepared by:  Reviewed by: 

Name A Fraser **Name**
Qualifications CPEng CMEngNZ **Qualifications**



TABLE OF CONTENTS

1. SCOPE.....4
2. GEOTECHNICAL ASSESSMENT5
3. BUILDING PLATFORM.....7
4. SUMMARY AND RECOMMENDATION8

APPENDICES

- A. Photographs
- B. Plans
- C. Historical Aerial Photos – NPDC GIS

RPT-4317 Engineering Report 9 Washer Road TAPUAE

1. SCOPE

This report deals with the engineering requirements for a Building Platform at 9 Washer Road.

The site details are shown on the appended plans.

The assessment is based on knowledge of the Tapuae area from the original subdivision in 2006 followed by the development of several individual sites for building platforms and for construction.

The first site appraisal by the author was carried out on foot with the client.

The extent of this initial visual assessment covered the general flat area around RL 59m where the possible building platform is planned followed by the gully that extends below the toe of the more recent slip in a north westerly direction.

The second assessment centred on the gully to investigate the general geology of the gully formation including material types and groundwater to allow mapping.

RPT-4317 Engineering Report 9 Washer Road TAPUAE

2. GEOTECHNICAL ASSESSMENT

The geology of the locality comprises Taranaki Volcanic Ash mantle layering overlying sandstone tertiary formation as observed in the adjacent road cuttings and general excavations and in the coastal cliffs.

The geology for the site is based on this description as shown on the attached drawings.

The attached historical aerial photographs from the NPDC GIS database show the surface conditions from 2001 to almost present day.

The features observed in the gully shows the gully is a regressing formation caused by block or slip type failure of the volcanic ash at the head of the gully.

The gully typically contains loose saturated volcanic ash slip debris material around 1m to 2m depth overlying the sandstone.

This failure is initiated at the interface between the volcanic ash and the sandstone where the groundwater table is weakening and weathering the volcanic ash.

The most recent slip in the photos clearly shows the faulting of the volcanic ash formation and local subsidence at the crest of the slope.

We understand that several old pine trees seen in the 2001 photo were removed before 2005 when the original subdivision had started when the slope was predominantly grassed only with little signs of instability.

This situation appears unchanged through the 2007 and 2010 photos.

The 2012 photo show a fresh broad slip at the head of the gully where the slope was planted with native shrubs as part of an overall planting programme in the subdivision.

The photo in 2013 shows the 2012 situation remains essentially unchanged with some vegetation growth on the slip area.

The attached long section A-A that extends though the proposed building and down along the gully alignment shows the ground profile before the recent slip in 2020/2021 as the black line, and the profile after the slip as the green dashed line.

The section A-A also illustrates the assessed subsoil formation.

The long section B-B shows a similar profile west of the proposed building with the same subsoil features.

The stability of the slope at the head of the gully has been determined by the following considerations.

The slope requirements of NZS 3604, the Light Timber Frame Building Code specify maximum ground downslopes beyond the shallow foundations of residential buildings for different soil types which should not be exceeded.

The volcanic ash can be described as a sandy clay under NZS 3604 which has a maximum downslope of 3H:1V or around 18 degrees below a horizontal line or surface.

The known stability of cut slopes in Taranaki volcanic ash can vary but are typically not greater than 1H:1V or 45 degrees, or 1½:1 or 34 degrees.

RPT-4317 Engineering Report 9 Washer Road TAPUAE

This is mainly because the volcanic ash has allophane properties chemically binding the soil structure that allow the volcanic ash to have greater short term and most importantly long-term stable slopes.

The stability of this location is also determined by the regressing gully formation and instability of the slope caused by the faulting and slipping of the volcanic ash over the sandstone which can override the above considerations.

RPT-4317 Engineering Report 9 Washer Road TAPUAE

3. BUILDING PLATFORM

There is limited space available on the flat area at RL 59m for a building platform for a residential building as shown on the Site Plan.

The proposed house has been positioned for what appears to achieve the best situation into the landscape.

The section A-A shows that the slope would have to be at least 2:1 for the proposed building to be outside the potential area of instability of the slope.

This slope is steeper than the NZS 3604 requirement of 3:1 which is not acceptable.

This slope is flatter than 1½:1 which would be acceptable without other considerations.

The stability of the building platform is however dominated by the regressing gully formation and the potential for the slip type failures to reach the influence of shallow house foundations.

The rate of regression cannot be determined exactly because the slip type failures tend to happen irregularly.

The proposed building would require some form of pile foundations to anchor the structure and to provide some degree of security against ongoing slope failure that could otherwise make the building unstable.

The extent of slipping over a 50-year life could not be accurately predicted and while there would be potential loss of useable land around the building, the work required to achieve stability of the building would be extensive.

The building platform could be lowered several metres to reduce the load on the slope and to effectively set the house further back from the lowered crest of the slope.

This may do little to stop the slope regression however as it would not directly solve the slope instability issue.

The base or toe of the slip could be retained by driving steel piles into the underlying sandstone.

The engineering and construction work required would be extensive and is not recommended.

RPT-4317 Engineering Report 9 Washer Road TAPUAE

4. SUMMARY AND RECOMMENDATION

The stability of the proposed building is compromised by the instability of the adjacent gully formation on the site that will continue to regress at an unknown rate.

The proposed building location may be possible with extensive pile foundations however the damage potentially caused from the regression of the slip would be difficult to predict.

The proposed building location may also be possible by providing a significant retaining wall constructed into the sandstone at the toe of the slip.

Alternative options could involve moving the proposed building away from the problem to either:

- a) Further back from the gully area towards the highway, or
- b) Sideways and away from the gully to the north.

Appendix A Photographs



Photo 1: view from base of slip looking up to the top of the slope.

RPT-4317 Engineering Report 9 Washer Road TAPUAE



Photo 2: view looking down the gully from base of slip.

RPT-4317 Engineering Report 9 Washer Road TAPUAE



Photo 3: view to the south looking across the top of the slope.

TAB 4

Desktop Assessment — 9 Washer Road, Omata (Job No. 1018457)

Tonkin & Taylor Ltd · 28 September 2021
Within ECM 9383904

Locator references

- Section 2.5 — review of historical aerial photographs (1970–2013), including 2005 earthworks and a 2012 landslide.
- Section 3.1 — Site 1 assessed as high risk of gully regression within 100 years.
- Section 3.2 and 4.2 — Site 2 assessed as lower risk; further geotechnical testing recommended.
- Section 4.1 — Site 1 ground-stabilisation options (palisade wall; fill buttress with shear key).

Washer Family Trust
16 Koru Road, New Plymouth

Attention: John Washer

Dear John

Desktop assessment for proposed residential development at 9 Washer Road, Omata

1 Introduction

1.1 Scope and purpose

Tonkin & Taylor Ltd (T+T) has been engaged by the Washer Family Trust to provide a desktop study of the property at 9 Washer Road, Omata.

We understand that a residential dwelling is proposed to be built on the property. Originally, the dwelling was to be situated at the centre of the property (Site 1), behind the head scarp of a gully which extends beyond the northern property boundary. An alternative location (Site 2) has been proposed to the south-east and further back from the gully, straddling the south-eastern boundary (noting the presence of the current boundary line).

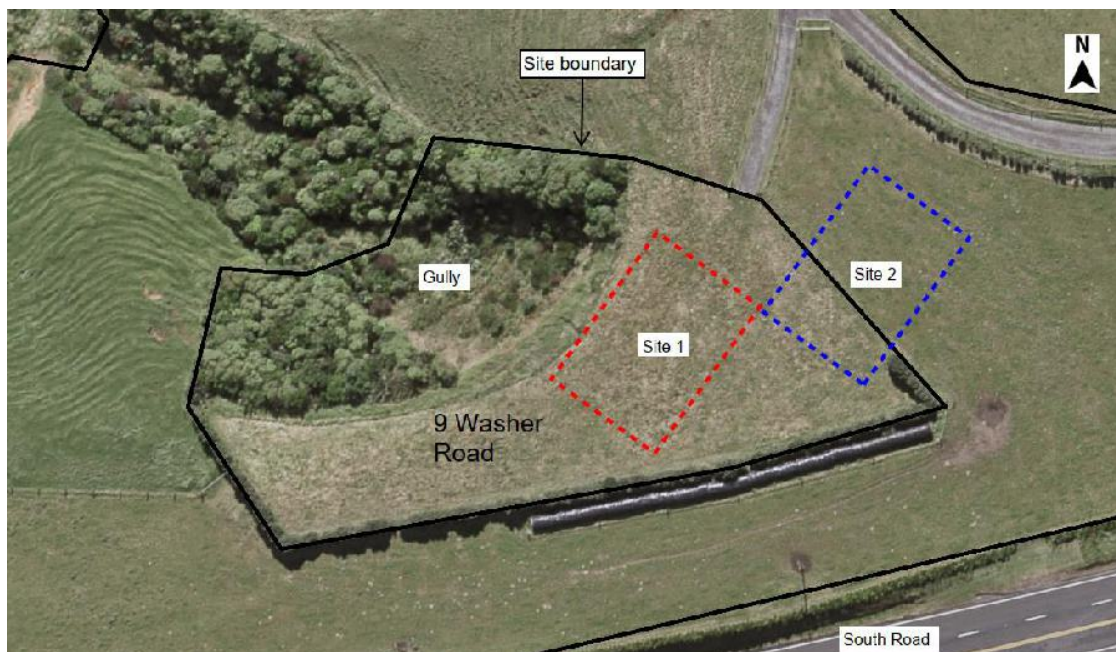


Figure 1.1: Aerial photograph of 9 Washer Road, with approximate extents of Site 1 and Site 2.

The purpose of this report is to provide a geotechnical desktop assessment of both the original and alternative options for the proposed dwelling site, with our technical assessment forming part of the Client's overall decision as to which building site is preferred for the dwelling (Site 1 or Site 2).

The scope of work, as outlined in T+T Letter of Engagement dated 13 August 2021 is to carry out the following tasks:

- Review readily available documentation and historical investigations relating to the property;
- Undertake a site inspection by a T+T geotechnical engineer, with visual inspection of the land around the property;
- Prepare this letter report discussing the findings of our desktop study and site observations, and provide (if any) recommendations for further site investigations at each for the two options.

Based on our assessment of the two sites (Site 1 and 2) in this report, we consider there is a high risk of future ground stability issues at Site 1 unless considerable and costly slope retention measures are implemented. In comparison, we consider Site 2 to be of low risk of future ground stability issues. The findings of our assessment are detailed in this report.

1.2 Available information

Available information used in this desktop review include the following:

- Regional geological maps¹;
- Historical aerial photographs (Retrolens² and New Plymouth District Council³);
- 6 No. hand augered boreholes from previous investigations within the Tapuae Farm Park Subdivision⁴;
- T+T Geotechnical Investigation Report, 2004⁴;
- Red Jacket Engineering Report, 2021⁵.

2 Property description and Geological Setting

2.1 Property description

The location of the property is shown in sketch 1 attached. It is legally described as Lot 20 DP 385658 and is located along Washer Road, approximately 4 km north-east of Oakura, and 12 km south-west of New Plymouth. The Tapuae Stream and the Tasman Sea are situated approximately 250 m and 600 m to the north-west of the north-western boundary, respectively.

The property has an approximate area of 0.4 Ha, and is bounded by mixed general farmland with low level residential development. Access is from the north-east from a shared driveway, which adjoins with Washer Road. The property is part of the wider Tapuae Farm Park Subdivision.

The southern extent of the property is gently sloping towards the north-west, at an approximate elevation of 59 mRL. The northern extent of the property comprises a steeply sloping gully which

¹ Townsend, D.; Vonk, A.; Kamp, P.J.J. (compilers) 2008: Geology of the Taranaki area. Institute of Geological & Nuclear Sciences 1:250,000 geological map 7. 1 sheet + 77 p. Lower Hutt, New Zealand. GNS Science.

² Retrolens. 2021. Retrolens. <https://retrolens.co.nz/>.

³ New Plymouth District Council. 2021. GIS Viewer. <https://www.newplymouthnz.com/Council/About-the-Council/Online-Services/Maps-and-GIS>

⁴ T+T, 2004: Taupe Farm Park Subdivision, New Plymouth - Geotechnical Investigation Report, March 2004, 21276.001.

⁵ Red Jacket Limited, 2021: Engineering report – building platform – 9 Washer Road Tapuae, July 2021, RPT-4317 Rev-A

is supported by the recent report by Red Jacket (2021)⁵, which suggested the New Plymouth Ash to be up to 16 m thick beneath the property, with the base of the ash at ~40 mRL.

2.4 Groundwater

Based on aerial photographs³, there is evidence to suggest groundwater seepage from the slope/within the gully below the property at an elevation of ~40 mRL. The aerial photographs (see Figure 2 below) show the grass to be greener downslope from an elevation ~40 mRL, than the grass upslope which is brown and dry, suggesting the slope below is being fed by groundwater seepage at this elevation. This observation is supported by Red Jacket (2021)⁵ which suggested groundwater seepage at the stratigraphic boundary between the New Plymouth Ash and the underlying geological unit within the gully (inferred from the cross-sections at ~40 mRL). On review of historical aerial photographs of the site, it appears that the groundwater seepage at the head of the gully may continue throughout the year, even in the drier summer months.

We infer based on information currently available that the groundwater below the property is perched within the New Plymouth Ash layer, and seeping out of the slope/gully at an elevation consistent with the boundary between the ash layer and the underlying Maitahi Lahar deposit at ~40 mRL.

A large pond is situated approximately 200 m to the north-east of the property at an elevation of approximately 46 mRL. We infer the water in this pond is potentially perched on the Maitahi Lahar deposit (i.e. the ash is more permeable than this underlying layer).

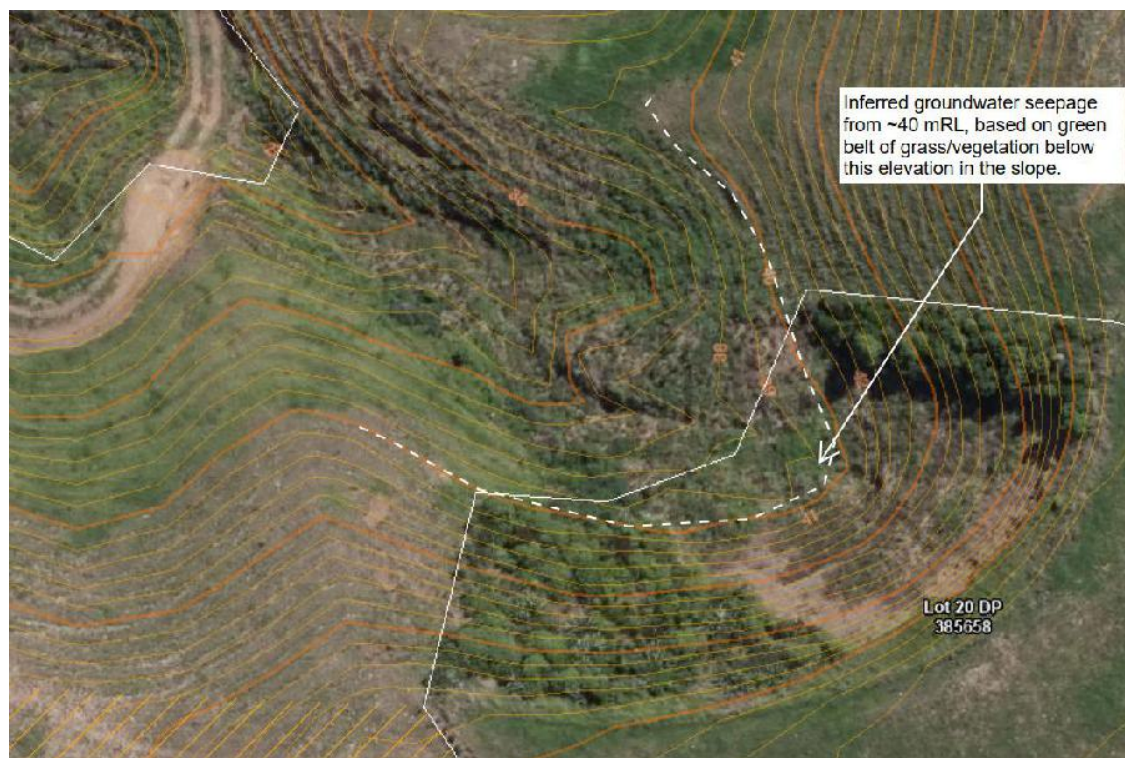


Figure 2: Aerial photograph (2013) showing potential elevation of groundwater seepage within the slope.

2.5 Historical aerial photographs

A review of the historical aerial photographs^{2,3} identified the following features on the property:

- 1970: The gully slopes are grassed with some vegetation (trees/shrubs) within the base of the gully (vegetation may indicate elevation of groundwater seep). There is no evidence of recent landslips (i.e. within the past 2 years), except for a potential head scarp/tension crack feature at the head of the gully (adjacent proposed Site 1). There is no evidence of land instability on proposed Site 2. Large trees are situated on the crest above the gully slope.
- 2001: Large trees have been removed from crest of gully slope.
- 2005: Earthworks are occurring on the property, in conjunction with the construction of Washer Road. Fill may have been placed over the southern extent of the property, and the southern-most crest of the gully. Trees have been removed from within the gully.
- 2007: No evidence of slope instability at the site.
- 2011: No evidence of slope instability at the site. Trees/shrubs appear to have been planted on the upper slopes of the gully within the property boundary.
- 2012: An approximately 30 m wide landslip is evident on the upper slopes of the gully adjacent to the proposed Site 1 (see Figure 2.3). Landslip debris has accumulated within the gully-floor along the northern boundary. No evidence of land instability on proposed Site 2.
- 2013: Landslip area is revegetating with no visual evidence of further land instability on the slope.



Figure 2.3: Aerial photo showing landslip on the gullyhead slope in 2012³

2.6 Site walkover

A site walkover was undertaken by a geotechnical engineer from T+T on 4 August 2021, along the southern side of the property and looking down into the gully from the slope crest. A summary of site observations is provided below.

- The southern half of the property is generally flat/very gently sloping to the north-west, comprising a grassed paddock with no development (buildings or services). There was no visual evidence of slope instability identified in this part of the property.

- b The northern half of the site breaks into a very steep slope which extends down to a heavily vegetated gully of planted trees and shrubs. According to the property owners, a landslip occurred ~2012 and then again in 2020/2021 on the slopes of the gully head resulting in regressing of the slope crest to about the centre of the property.
- c There appeared to be some slumping of land at the crest of the gully head (towards the south), which may indicate potential regression of the landslip. As the grass on the slope/behind the crest was long, no evidence of tension cracks was observed.
- d A minor scalloped depression was observed in the land directly behind the slope crest (directly to the north of Site 1) corresponding to a section of the farm fence of which the fence posts had dislodged (shown on Figure 2.4), which may indicate potential regression of the landslip.
- e The area along the eastern property boundary (Site 2) appears to be gently sloping down to the west. There is generally no visual evidence of recent land instability in this area.



Figure 2.4: View looking north-east at the gully head, slope crest, and ground depression behind slope crest (photo taken during site walkover 4th August 2021).

3 Geotechnical assessment

3.1 Site 1 (behind the gully head)

We have assessed the available site information and consider there is a high risk of the gully slope regressing into the footprint of Site 1, causing likely ground stability issues within the next 100 years, unless appropriate slope retention measures are implemented.

Site 1 is on a gentle north-west sloping site, with the proposed dwelling footprint approximately 4 m to the south-east (behind) of the slope crest. Another smaller structure is shown on the building plans to straddle the slope crest to the north-west of the dwelling. See Appendix A for proposed dwelling layout plan at Site 1⁷.

⁷ KR Architecture: Fastfox Developments Lot 9 Tapuae, Project 0108 – Site plan – SK1.01.

To the northwest of Site 1, the gully extends across the north-western extent of the property. The gully is approximately 30 – 40 m wide, and is generally very strongly sloping at about 22°, with the gully head (situated within the property) steeply sloping at about 40°. The slope gradient increases towards the upper section of the gully head (immediately below Site 1) to be very steep with a gradient of about 60°. The overall elevation change within the gully head in front of Site 1 is approximately 19 m (59mRL down to 38 mRL).

Based on the nearby investigations, we infer the site to be underlain by New Plymouth Ash, overlying the Maitahi Lahar Formation. Uncontrolled fill may also exist across the proposed site, from the site earthworks evident in the historical aerial photograph in 2005.

There is evidence of prior slope instability on the gully head, with an approximately 30 m-wide landslip occurring in 2012, reports of another landslip in 2020/2021 by the property owners, and depressions in the land immediate behind the slope crest (in front of Site 1) identified in our site walkover.

We infer that the slope instability is induced by groundwater seepage through the base of the ash, causing the ash unit to weather and soften, resulting in the failure of the slope above. Seasonal/heavy rain fluctuations in groundwater level, and potential water ponding within the land depressions behind the headscarp, will likely also contribute to the failure/regression of the slope within the gully head.

We generally agree with the report by Red Jacket (2021)⁵ suggesting the instability of the slope may be initiated on the stratigraphic boundary between the ash (New Plymouth Ash) and the underlying stratigraphic unit, where perched groundwater is seeping out of the slope. The cross sections in the report show the ash layer to extend to approximately 16 m depth across the southern half of the site.

3.2 Site 2 (eastern boundary of the property)

Based on our desktop assessment, we consider there to be a lower risk of slope instability issues within Site 2 within the next 100 years, in comparison to Site 1.

Site 2 is on a gentle west sloping site, straddling the current eastern property boundary. The proposed dwelling is shown to be approximately 40 m to the east of the crest of the steep gully on the available dwelling design plans. See Appendix A for proposed dwelling layout plan at Site 2⁸.

On assessing the historical aerial photographs and recent site walkover, we consider there is no evidence of slope instability within the footprint of the proposed dwelling. We assess the site stability as not likely to be affected by slope regression of the gully in the next 100 years.

Uncontrolled fill may be present on the site based on the 2005 aerial photograph showing earthworks in the area, which should be confirmed through site investigations.

We expect shallow foundations may be suitable for the dwelling (probably satisfying NZS 3604, but to be confirmed by geotechnical investigations and assessment).

4 Concept site investigations and slope retention solutions

4.1 Site 1 (behind the gully head)

If the Client wants to stabilize the ground at Site 1, there will likely be considerable cost for ground investigations, design, construction and consenting.

⁸ KR Architecture: Fastfox Developments Lot 9 Tapuae – 12 Jul 2021 - Project 0108 – Site plan – SK1.01.

Dependant on the results of ground investigations, options for ground stabilization could include:

1 Option 1 - In-ground palisade wall

- Palisade wall (~20 m long wall length in plan view) along the crest of the slope to the north-west of the proposed dwelling, comprising;
 - A single row of reinforced concrete piles along the crest of the gully slope;
 - Piles to be socketed into suitable ground (the Maitahi formation);
 - Reinforced concrete capping beam;
 - Drainage measures be installed into the slope to aid in the protection the ash layer immediately in the slope from weathering/softening from groundwater seepage;
 - Depending on the investigations, the wall may need to also be anchored into competent material.

Where a palisade wall is installed along the slope crest, we suggest shallow foundations may be suitable for the dwelling to satisfy NZS 3604 (to be confirmed by geotechnical investigations and assessment).

2 Option 2 - Fill buttress (with shear key) along the base of the gully slope

- ~35 m long shear key be excavated into competent ground (Maitahi Lahar deposit?) along the base of the gully head, within the property boundary.
- The shear key backfilled and a fill buttress be constructed against the gully head slope, with engineered fill. Geogrid may be required.
- Drainage be installed within the shear key, buttress, and within the ash layer, to protect the soil from groundwater seepage.

Ground investigations and design to support both options above (Option 1 and 2) will likely comprise:

- Geotechnical investigations
 - 3 No. machine drilled boreholes up to 25 m depth;
 - 5 No. hand augered boreholes;
 - Installation of piezometers into each borehole to assess groundwater elevations;
 - Detailed site walkover/mapping by an Engineering Geologist.
 - Topographical survey of the site
- Slope stability assessment and design of the slope stabilisation method
- Preparation of design documentation/drawings
- Submission for Building Consent Application.

The constructability and costs of the slope stabilisation works will need to be confirmed by a construction contractor.

4.2 Site 2 (eastern boundary of the property)

To support the design of shallow foundations for the proposed dwelling on Site 2, we would recommend 3 No. hand augered boreholes be undertaken within the building footprint to a depth up to 4 m, with Scala penetrometer tests at the base of the boreholes to up to 6 m depth. Any uncontrolled fill, or colluvium must be identified and accounted for in geotechnical design.

5 Applicability

This report has been prepared for the exclusive use of our client, the Washer Family Trust, with respect to the particular brief given to us and it may not be relied upon in other contexts or for any other purpose, or by any person other than our client, without our prior written agreement.

Tonkin & Taylor Ltd

Environmental and Engineering Consultants

Report prepared by:

Authorised for Tonkin & Taylor Ltd by:



Richard Bond
Engineering Geologist



Pierre Malan
Project Director

RLXB

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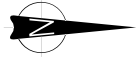


LEGEND

Property Boundary

Site 1 (approximate location)

Site 2 (approximate location)



1. Property Boundary sourced from the LINZ Data Service and licensed for re-use under the Creative Commons Attribution 3.0 New Zealand licence.
2. World Imagery Source: Esri, Maxar, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community

Created On:	08/09/2021	<p>Tonkin+Taylor 105 Carlton Gore Road, Newmarket, Auckland www.tonkin+taylor.co.nz</p>
Created By:	Riband	
Approved By:		
TT Print Ref:	1009262	
TT Map Ref:	TTMAPREF143463001.902	

WASHER FAMILY TRUST
9 WASHER ROAD, OMATA

Aerial Photograph

TAB 5

Scheme Plan W-211212-RC01, Sheet 2

McKinlay Surveyors · 27 May 2024

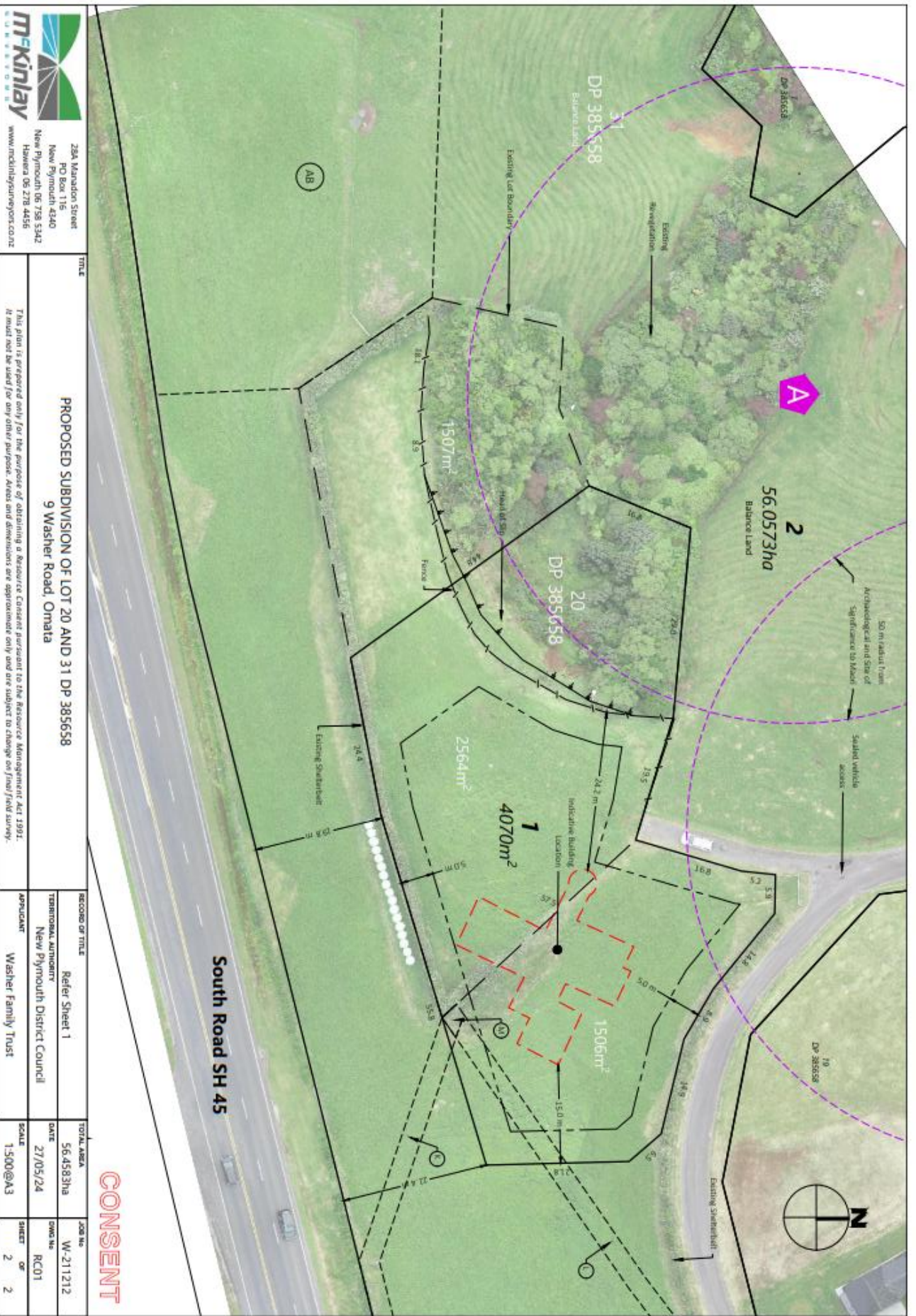
Reproduced at Figure 3 of the s42A report (ECM 9800856)

Locator references

- Indicative Site 2 building location shown set back 24.2m from the head of the slip.

See also Tab 2 and Tab 6.

Figure 3: Proposed Scheme Plan SUB24/50201 and LUC24/48662. Source: McKinlay Surveyors.



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TITLE	PROPOSED SUBDIVISION OF LOT 20 AND 31 DP 385658 9 Washer Road, Omata
RECORD OF TITLE	Refer Sheet 1
APPLICANT	Washer Family Trust
TOTAL AREA	56.4583ha
DATE	27/05/24
SCALE	1:500@A3
JOB No	W-211212
DWG No	RC01
SHEET	2
OF	2

This plan is prepared only for the purpose of obtaining a Resource Consent pursuant to the Resource Management Act 1991. It must not be used for any other purpose. Areas and dimensions are approximate only and are subject to change on final field survey.

TAB 6

Joint Witness Statement — Campbell Robinson and Christopher Rendall

Future Proof Planning Ltd / Landpro Ltd · 12 June 2026

Document Set ID 9820520 · Filed in SUB24/50201.01

Locator references

- Para 3.2 — experts' agreed position that the existing consent notice conditions be cancelled rather than varied; records that this "does not materially alter the scope of the application".
- Para 3.3 — Mr Rendall's note on linking cancellation of the consent notice conditions to creation of the new titles.
- Para 3.4 — experts' alternative to provide a variation-based condition suite if required.
- Appendix 1, Decision 1, condition 4 — dwelling on Lot 1 to be set back a minimum of 24.2m from the head of the gully.
- Appendix 1, Decision 1, condition 7 — foundation design to be informed by the Red Jacket (28 April 2025; 12 July 2021) and Tonkin & Taylor (28 September 2021) reports.
- Appendix 1, Decision 1, condition 8 — buildings and soak holes to be set back at least 15m from the top of the gully.
- Appendix 1, Decision 3 — cancellation of conditions within Consent Notices 7890638.35 and 7890638.24.

See also Tab 2 and Tab 5.

UNDER

The Resource Management Act 1991

IN THE MATTER OF

SUB24/50201 & LUC24/4866 being applications for land use and subdivision consent and SUB24/50201.01 being an application for change to consent notices at 1 and 9 Washer Road, Omata

JOINT WITNESS STATEMENT

CAMPBELL ROBINSON

CHRISTOPHER PAUL RENDALL

12th June 2026

1. INTRODUCTION

- 1.1 This signed Joint Witness Statement (**JWS**) is written in line with the commitment made in the officers s42A report under application SUB24/50201.01¹.
- 1.2 Conferencing between experts was undertaken on Monday the 8th of June at the New Plymouth District Council Offices and followed up via email. The participants in conferencing were (in alphabetical order):
- a. Chris Rendall, consultant planner, Landpro Limited, engaged by Washer Family Trust Ltd (as the applicant); and
 - b. Campbell Robinson, consultant planner, Future Proof Planning Limited, engaged by New Plymouth District Council as the reporting planning officer and author of the S42A report on both the substantive application and the request to vary consent notices.
- 1.3 The experts have read and agree to abide by the Environment Court's Code of Conduct for Expert Witnesses as specified in the Environment Court's Consolidation Practice Note 2023.
- 1.4 While a third planner, Ms Hooper, provided expert evidence to the hearing, her evidence was limited to a broad overarching review and comment on the process. Ms Hooper was provided the opportunity to participate in this Joint Witness Statement but did not consider it would aid the process by contributing at this stage. She has been provided a copy of this Joint Witness Statement and is comfortable with its content.

2. BACKGROUND

- 2.1 A range of planning matters were discussed at the hearing on the substantive applications (SUB24/50201 & LUC24/4866) and now form part of the public record. This includes a joint witness statement on behalf of Mr Robinson and Mr Rendall². These matters will not be revisited as part of this statement.

¹ Paragraphs 99 and 100

² Joint Witness Statement dated 7th November 2025

3. SCOPE

3.1 The scope of the joint witness statement is primarily concerned with the draft conditions of consent for both the substantive applications and the current application to vary consent notices.

3.2 The **experts agree** that should the application be granted, the proposal should be subject to the conditions outlined in Appendix 1. The conditions reflect an agreed understanding that;

- the specific existing conditions within the consent notices be cancelled rather than varied; and
- cancelling rather than varying the conditions within consent notices does not materially alter the scope of the application as it achieves the same outcome.

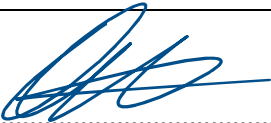

3.3 Mr Rendall considers that there is a risk associated with the cancelation method which needs to be avoided through a clear linkage between the cancelation of the consent notice conditions and the creation of the new titles to avoid the potential for the consent notices to be cancelled without the subdivision proceeding leaving an unintended gap in the consent notices.

3.4 If the commissioner considers that there is only scope to vary the conditions contained within the existing consent notices, then the experts are willing to provide a condition suite based on that approach.

4. CONCLUSION

4.1 The experts have undertaken conferencing and have agreed a set of conditions of consent should the Commissioner be minded to grant consent.

Signed on Friday 12th June 2026 by:

 Chris Rendall	 Campbell Robinson
--	--

Appendix 1: Draft Conditions of Consent

DECISION 1: SUBDIVISION CONSENT UNDER SUB24/50201.

In accordance with Section 104B of the Resource Management Act 1991, consent is granted for a 2-lot fee simple boundary adjustment subdivision at 1 and 9 Washer Road being Lot 20 DP 385658 and Lot 31 DP 385658 for the reasons summarised below:

1. The effects of the proposal on the environment will be acceptable.
2. The proposal is consistent with the relevant objectives and policies of the Part Operative District Plan and Regional Policy Statement and all other relevant matters.
3. The proposal meets the purpose of the Resource Management Act 1991.

Section 223 Certificate:

General:

1. The survey plan must be generally consistent with the scheme plans submitted by Landpro Ltd and drafted by McKinlay Surveyors, Job Reference W-211212, Drawing RC01, Sheets 1 and 2, dated 27.05.2024 and all other information including further information contained within application reference number SUB24/50201.
2. Prior to Section 223 certification, any existing structures or buildings must meet the permitted activity Effects Standards specified in the Part Operative New Plymouth District Plan relative to the new boundaries.

Amalgamation:

3. That Lot 2 X hereon and Lot 32 DP 385658 (legal access) be held as to thirty undivided one-thirtieth shares by the owners of Lots 1 to 19, Lots 21 to 30 DP 385658 and Lot 1 X hereon as tenants in common in the said shares and that the individual Records of Title be issued in accordance therewith (LINZ reference 1962269).

Building Restriction Areas:

4. Any residential dwelling located on Lot 1 X hereon must be setback by a minimum distance of 24.2 metres from the head of the gully located in the north-western corner of Lot 1.
5. Condition 4 must be imposed by way of a consent notice under section 221 of the Resource Management Act 1991 and be registered against the new Record of Title for proposed Lot 1 being a subdivision of Lot 20 DP 385658 and Lot 31 DP 385658.

Section 224 Certificate:

Stormwater:

6. The consent holder must dispose of the stormwater in a way that does not create a new nuisance to neighbouring land and/or property.

Building Platform – Lot 1:

7. The foundation design of any building on Lot 1 must be informed by the reports of Red Jacket dated 28 April 2025 and 12th July 2021 and the Tonkin and Taylor report dated 28th September 2021.
8. Buildings and soak holes on Lot 1 hereon being a subdivision of Lots 20 and Lot 31 DP 385658 must be setback by at least 15m from the top of the gully.
9. Conditions 7 and 8 must be imposed by way of a consent notice under section 221 of the Resource Management Act 1991 and be registered against the new Record of Title for proposed Lot 1 being a subdivision of Lot 20 DP 385658 and Lot 31 DP 385658.

Restrictions on Lot 2:

10. That Lot 2 X hereon, being a subdivision of Lots 20 and Lot 31 DP 385658, and Lot 32 DP 385658 must not be further subdivided and must not be disposed of other than in conjunction with Lots 1 to 19 & 21 to 30 DP 385658.
11. There must be no residential building located on Lot 2 X hereon being a subdivision of Lots 20 and Lot 31 DP 385658 or Lot 32 DP 385658.
12. Conditions 11 and 12 must be imposed by way of a consent notice under section 221 of the Resource Management Act 1991 and be registered against the new Record of Title for proposed Lot 2 being a subdivision of Lot 20 DP 385658 and Lot 31 DP 385658.

DECISION 2: LAND USE CONSENT UNDER LUC24/48662.

In accordance with Section 104C of the Resource Management Act 1991, consent is granted for the ability to site future dwellings or structures within side yard boundary setbacks of Lot 1 hereon being a subdivision of Lot 20 DP 385658 and Lot 31 DP 385658 for the reasons summarised below:

1. The effects of the proposal on the environment will be acceptable.
2. The proposal is consistent with the relevant objectives and policies of the Part Operative District Plan and Regional Policy Statement and all other relevant matters.
3. The proposal meets the purpose of the Resource Management Act 1991.

Approved Plans:

1. The use and development of the land must be generally consistent with application No. LUC24/48662 including further information submitted during the processing of the application and with the following plan:

Plan No	Name	Date
W-211212	PROPOSED SUBDIVISION OF LOT 20 AND 31 DP 385658 Washer Family Trust 9 Washer Road, Omata	27.05.24

2. Any future buildings on this site may be erected a minimum of 5 metres from the boundary between Lot 1 and Lots 2, excepting where a consent notice on the Record of Title of Lot 1 requires a greater setback.

Notification to monitoring

3. At least 48 hours prior to any physical work commencing on Lot 1 hereon, the consent holder must contact the Council's Compliance and Monitoring Officer at planningconsents.monitoring@npdc.govt.nz advising them of the start of works.

Compliance with Permitted Activity Acoustic Noise Requirements:

4. Prior to residential occupation of any future dwelling on Lot 1, the consent holder must provide certification from a suitably qualified acoustic engineer that the dwelling has been constructed, and mechanical ventilation provided to bedrooms and habitable rooms which meet the Permitted Activity criteria of Part Operative District Plan Effects Standard NOISE-S3 (1).

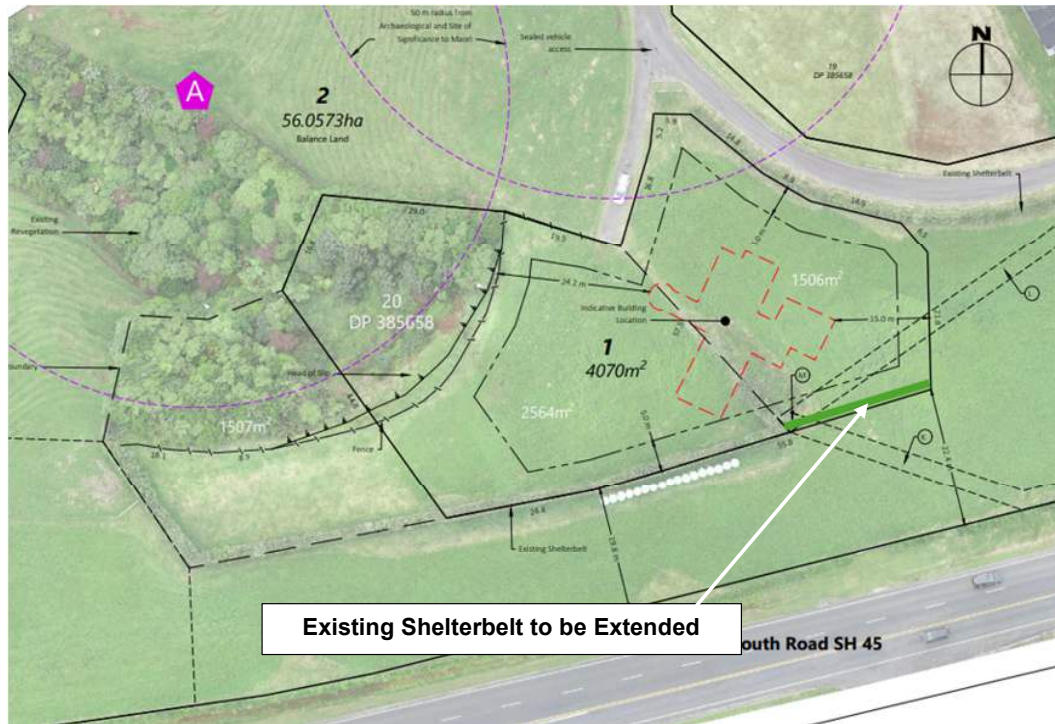
Accidental Discovery Protocol Cultural or Archaeological Artefacts:

5. If the presence of an archaeological or cultural artefacts is uncovered or are suspected of being uncovered, the consent holder shall immediately cease works and contact local hapū and Heritage New Zealand.

Work

6. The consent holder must undertake planting within Lot 1 to extend the existing shelter belt to be consistent with Diagram 1 below (green line) to the extent this is consistent with any restrictions imposed by existing easements K & M in favour of Powerco Limited and L in favour of Telecom. Planting is to match the species used in the existing shelter belt where appropriate.
7. The consent holder must maintain any plantings for a period of 48 months from time of planting to allow for plant establishment to the satisfaction of the Council's Monitoring Supervisor. Plants that die or are removed shall be replaced with plants of the same species and original size. Any plants that fail shall be replaced at the expense of the consent holder. All plantings must continue to be maintained by the consent holder thereafter.

Diagram 1: Shelterbelt requirements



DECISION 3: CANCELLATION OF CONSENT NOTICES UNDER SUB24/50201.01

In accordance with Section 221 of the Resource Management Act 1991, consent is granted to cancel specific conditions within the following consent notices:

- Notice number 7890638.35 on Lot 31 Deposited Plan 385658 which requires that *"That Lots 31 and 32 shall not be further subdivided and cannot be disposed other than in conjunction with lots 1-30 inclusive"*.
- Notice number 7890638.35 on Lot 31 Deposited Plan 385658 which requires that *"There shall be no residential building located on Lots 31 or 32"*; and
- Notice number 7890638.24 on Lot 20 Deposited Plan 385658 which requires that *"Buildings and soakholes on Lot 20 shall be set back 15 metres from the top of the gully"*.

for the reasons summarised below:

1. The effects of the proposal on the environment will be acceptable.
2. The proposal is consistent with the relevant objectives and policies of the Part Operative District Plan and Regional Policy Statement and all other relevant matters.
3. The proposal meets the purpose of the Resource Management Act 1991.

Advice Notes:

1. The land use and subdivision consent lapses 5 years from the date that the consents commence unless the consents have been 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. An application for an extension of time will be subject to the provisions of section 125 of the Resource Management Act 1991.

2. The granted consents are subject to the right of objection as set out in section 357A of the Resource Management Act 1991.
3. All costs in meeting the conditions of the granted consent shall be met by the consent holder unless otherwise stated.
4. Works that modify, damage or destroy any archaeological site(s) may require an archaeological authority (consent) from Heritage New Zealand.
5. There is no reticulated water supply available to Lot 1. Any dwelling constructed on Lot 1 will require provision for the water needs of the project in accordance with the provisions of the Building Code. The activity will require the consent holder 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. Bore or well water supply will require a water quality test and results report.
6. 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.
7. Development on Lot 1 shall require on-site septic treatment for sewerage complying with the NZBC. Lot 1 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.

TAB 7

Record of Title — Identifier 342942

LINZ historical search copy · 7 July 2025 · Transaction ID 6139534

Locator references

- Lots on title — Lot 26 DP 385658, together with undivided 1/30 shares in Lot 31 and Lot 32 DP 385658 (composite title).
- Instrument 7890638.35 — consent notice registered 29 July 2008.
- Instrument 7890638.42 — encumbrance registered 29 July 2008.
- Transfer 8509063.1 — transfer of Lot 26 (2010).



**RECORD OF TITLE
UNDER LAND TRANSFER ACT 2017
FREEHOLD
Historical Search Copy**




R. W. Muir
Registrar-General
of Land

Constituted as a Record of Title pursuant to Sections 7 and 12 of the Land Transfer Act 2017 - 12 November 2018

Identifier 342942
Land Registration District Taranaki
Date Issued 29 July 2008

Prior References
TNL2/691

Estate Fee Simple
Area 4402 square metres more or less
Legal Description Lot 26 Deposited Plan 385658
Original Registered Owners
John Charles Washer, Mary Carolyn Washer and Washer Family Trust Limited

Estate Fee Simple - 1/30 share
Area 56.0513 hectares more or less
Legal Description Lot 31 Deposited Plan 385658
Original Registered Owners
John Charles Washer, Mary Carolyn Washer and Washer Family Trust Limited

Estate Fee Simple - 1/30 share
Area 1.5685 hectares more or less
Legal Description Lot 32 Deposited Plan 385658
Original Registered Owners
John Charles Washer, Mary Carolyn Washer and Washer Family Trust Limited

Interests

Subject to a right of way over part marked A on DP 385658 created by Transfer 125951
The easements created by Transfer 125951 are subject to Section 37 (1) (a) Counties Amendment Act 1961
171536 Certificate declaring State Highway 45 adjoining the within land to be a Limited Access Road - 26.9.1969 at 10.22 am
475907.4 Esplanade Strip Instrument pursuant to Section 232 Resource Management Act 1991 - produced 15.12.2000 at 12.50 pm and entered 20.2.2001 at 9.00 am (Affects Lot 32 DP 385658)
7622620.2 Mortgage to ANZ National Bank Limited - 20.12.2007 at 11:06 am
7890638.2 Variation of Esplanade Strip 475907.4 pursuant to Section 234(7) Resource Management Act 1991 - 29.7.2008 at 9:00 am
Subject to Section 241(2) Resource Management Act 1991 (affects DP 385658)
7890638.30 Consent Notice pursuant to Section 221 Resource Management Act 1991 - 29.7.2008 at 9:00 am (Affects Lot 26 DP 385658)

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

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

Subject to a right to convey electricity in gross over parts marked B,C,D,E,G,J,K,M,R,S,T,U & W on DP 385658 in favour of Powerco Limited created by Easement Instrument 7890638.37 - 29.7.2008 at 9:00 am

The easement created by Easement Instrument 7890638.37 is subject to Section 243 (a) Resource Management Act 1991

Subject to a right to convey telecommunications and computer media in gross over parts marked B,C,D,E,G,H,J,L,M,R,S,U,V,W,X & Z on DP 385658 in favour of Telecom New Zealand Limited created by Easement Instrument 7890638.38 - 29.7.2008 at 9:00 am

The easements created by Easement Instrument 7890638.38 are subject to Section 243 (a) Resource Management Act 1991

Subject to a right to drain water in gross over parts marked AP,AR,AQ,AS,AT & AU on DP 385658 in favour of New Plymouth District Council created by Easement Instrument 7890638.39 - 29.7.2008 at 9:00 am

The easement created by Easement Instrument 7890638.39 is subject to Section 243 (a) Resource Management Act 1991

Appurtenant hereto is a right to convey water and electricity created by Easement Instrument 7890638.40 - 29.7.2008 at 9:00 am

The easements created by Easement Instrument 7890638.40 are subject to Section 243 (a) Resource Management Act 1991

7890638.41 Transfer to John Charles Washer, Mary Carolyn Washer and Washer Family Trust Limited - 29.7.2008 at 9:00 am

Land Covenant in Transfer 7890638.41 - 29.7.2008 at 9:00 am

Fencing Covenant in Transfer 7890638.41 - 29.7.2008 at 9:00 am

7890638.42 Encumbrance to Tapuae Country Estate Limited - 29.7.2008 at 9:00 am

7892807.1 Discharge of Mortgage 7622620.2 - 29.8.2008 at 11:22 am

7963146.2 Lease of 1/30th share in Lots 31-32 Deposited Plan 385658 Term 50 years from the 1st day of August 2008 (renewal clause) Composite CT 452058 issued. - 24.10.2008 at 3:51 pm

7963146.3 Variation of Lease 7963146.2 - 24.10.2008 at 3:51 pm

8509063.1 Transfer to Patrick Gerard Cameron, John Leonard Cameron and RMY Trustees (2006) Limited - 2.6.2010 at 10:00 am

8601793.1 Mortgage to TSB Bank Limited - 12.11.2010 at 9:21 am

12781073.1 Departmental dealing correcting Grantee in memorial 7890638.39 to New Plymouth District Council - 11.7.2023 at 7:00 am

TAB 8

Consent Notice 7890638.35 — Lots 31 and 32 DP 385658

NPDC / LINZ · registered 29 July 2008

Role: instrument whose conditions are the subject of variation / cancellation under
SUB24/50201.01

Locator references

- Lots 31 and 32 “shall not be further subdivided and shall not be disposed other than in conjunction with Lots 1-30 inclusive”.
- “There shall be no residential building located on Lots 31 or 32”.
- Also contains conditions for preservation of the Lot 31 cabbage tree, maintenance of marked areas in pasture, and ongoing native regeneration planting.

**CONSENT NOTICE PURSUANT TO SECTION 221
OF THE RESOURCE MANAGEMENT ACT 1991**



IN THE MATTER of Lot 2 DP 20763

AND

IN THE MATTER of Subdivision
Consent pursuant to Sections 105, 108,
220 and 221 of the Resource
Management Act 1991

Pursuant to Section 220 (1) (c) of the Resource Management Act 1991 the New Plymouth District Council by resolution passed under delegated authority on 21 July 2006 imposed the following condition on the consent for subdivision of Lot 2 DP 20763; being LT 385658

'That Lots 31 & 32 shall not be further subdivided and shall not be disposed other than in conjunction with Lots 1-30 inclusive;

'The mature cabbage tree on Lot 31 identified 'AH' shall be preserved and shall not be destroyed'

'There shall be no residential building located on Lots 31 or 32'

'That within the area marked B, C, AB, AC, AE, AF, AG, AQ and AR the area shall be maintained entirely in pasture, and no building or structure shall be erected other than a standard post, wire and batten fence'

'Native regeneration planting of gullies and riparian edges shall be maintained on a continuing basis. The owners of Lots 1 to 30, or their nominee (body corporate) shall take all reasonable steps to maintain, preserve and protect the vegetation established'

DATED at New Plymouth this 7 day of March 2008

Signed by the said FRANK VERSTEEG)
Principal Administrative Officer)
of the New Plymouth District Council)

A handwritten signature in black ink, appearing to read "F Versteeg", written over a horizontal line.

TAB 9

Consent Notice 7890638.24 — Lot 20 DP 385658

NPDC / LINZ · registered 29 July 2008

Role: instrument whose 15m setback condition is the subject of cancellation under SUB24/50201.01

Locator references

- Limits Lot 20 to one habitable dwelling.
- “Buildings and soakholes on Lot 20 shall be set back 15 metres from the top of the gully”.
- Building form and external materials conditions (House Type C).

**CONSENT NOTICE PURSUANT TO SECTION 221
OF THE RESOURCE MANAGEMENT ACT 1991**

IN THE MATTER of Lot 2 DP 20763

CONO 7890638.24 Conse

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AND

IN THE MATTER of Subdivision
Consent pursuant to Sections 105, 108,
220 and 221 of the Resource
Management Act 1991

Pursuant to Section 220 (1) (c) of the Resource Management Act 1991 the New Plymouth District Council by resolution passed under delegated authority on 21 July 2006 imposed the following condition on the consent for subdivision of Lot 2 DP 20763; being LT 385658,

That the number of habitable dwellings on Lot 20 shall be limited to one (1).

Buildings and soakholes on Lot 20 shall be set back 15 metres from the top of the gully.

Building Development on Lot 20 shall be generally in accordance with House Type C shown on Figure 2 - House Types attached to this Consent Notice.

The range of materials used on buildings will be limited to those with a minimum of applied finish, buildings being coloured by the natural patina developed over age.

A. External materials shall be:

*Natural stone; and/or
Lime washed solid plaster; and/or
Earth brick; and/or
Cast concrete; and/or
Timber; and/or
Powder coated zincalume.*

B. Roofing materials shall be limited to:

*Timber shingles; and/or
Natural slate; and/or
Copper; and/or
Textured bituminous membranes in tile form; and/or*

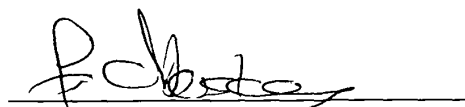
Long run non-reflective roofing material.

C. Other external components will be limited to:

*Selected use of a range of powder coated exterior window joinery and stormwater systems in a range of colours matching local flora
Metal stormwater systems.*

DATED at New Plymouth this 7 day of March 2008

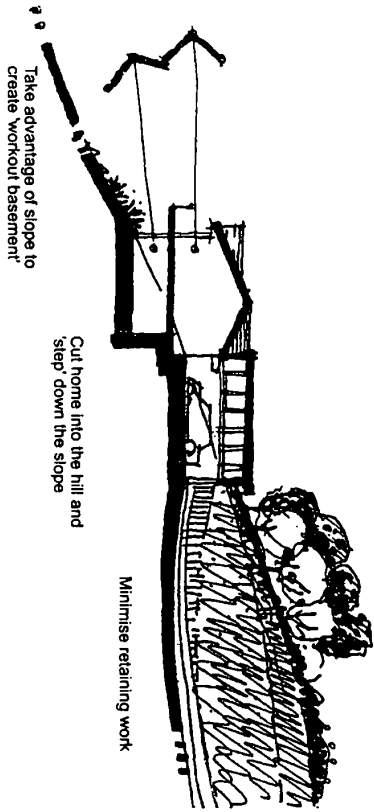
Signed by the said FRANK VERSTEEG)
Principal Administrative Officer)
of the New Plymouth District Council)

A handwritten signature in black ink, appearing to read 'F Versteeg', is written over a horizontal line. The signature is cursive and somewhat stylized.

DM321879

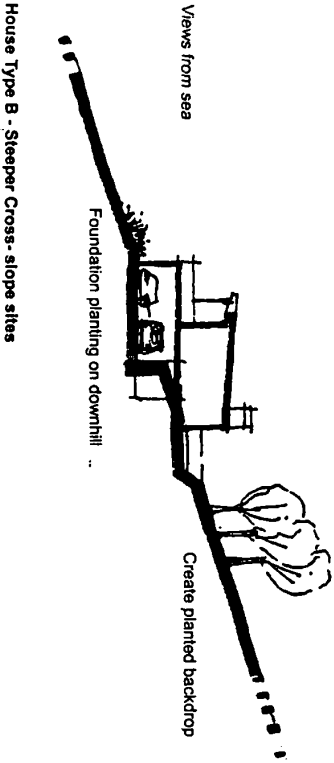
NOTE: Indicative Roof Lines.

Ensure Ridgeline Behind Home



House Type A - below promontory sites

Ensure ridgeline visible behind home



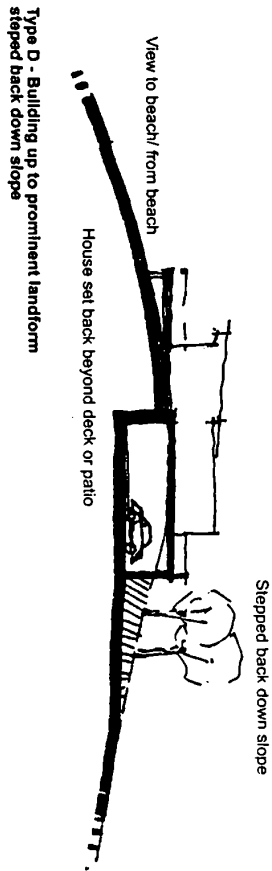
House Type B - Steeper Cross-slope sites

Low pergolas and bay windows help to reduce the visual bulk and scale of larger homes

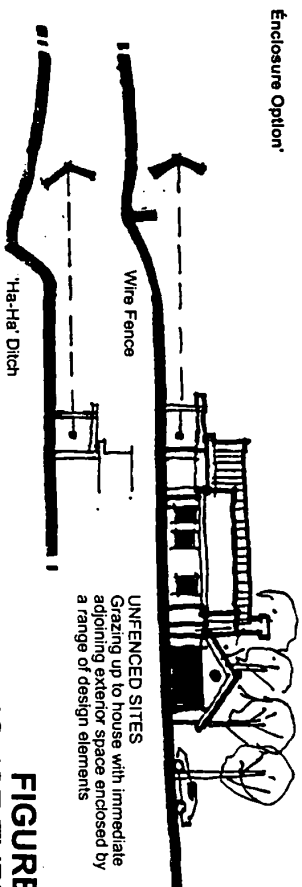


Create interesting building silhouette by varying roof forms, ridge heights

House Type C - Low slope sites (Single floor houses on flat or low slope sites)



Type D - Building up to prominent landform stepped back down slope



Enclosure Option'

FIGURE 2
HOUSE TYPES

Level 3, IBM Building, 82 Wyndham Street PO Box 91250 Auckland
Tel: 64-09-358-2528 Fax: 64-09-359-5300 Web: www.botramskell.co.nz

TAPUAE FARM PARK
Washer Family Trust
Typical Cross-Sections

U:\Auckland\30505306 (P1) Washer - House Stage 3\CAD\305306_Typical crosssections.dgn © Botram Skellern Limited 2005

Job No: 05306
Date: 19/10/2005 Revision: -
NOT TO SCALE

TAB 10

Encumbrance 7890638.42 — to Tapuae Country Estate Limited

LINZ · registered 29 July 2008

Locator references

- Clause 2(a)–(c) — encumbrancers' covenant to be and remain shareholders of TCEL while registered proprietor, and to fulfil shareholder obligations under the constitution.
- Clause 5 — encumbrancers include successors in title.
- Schedule — applies to all 30 residential lots and their 1/30 shares in Lots 31 and 32.

ENC 7890638.42 Encumt

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Memorandum of Encumbrance

"Tapuae Estate"

**JOHN CHARLES WASHER
MARY CAROLYN WASHER
WASHER FAMILY TRUST LIMITED as Encumbrancers**

AND

**TAPUAE COUNTRY ESTATE LIMITED
As Encumbrancee**

Certified correct for the purposed of the Land Transfer Act 1952

A handwritten signature in black ink, appearing to be 'S. J. ...', written over a horizontal line.

Solicitor for the Encumbrancee

MEMORANDUM OF ENCUMBRANCE

PARTIES

1. JOHN CHARLES WASHER, MARY CAROLYN WASHER and WASHER FAMILY TRUST LIMITED ("Encumbrancers")
2. TAPUAE COUNTRY ESTATE LIMITED ("Encumbrancee")

INTRODUCTION

- A. The Encumbrancers are the registered proprietor of all the land described in the Schedule hereto ("Land").
- B. The Encumbrancers have created a rural/residential farm park on the Land.
- C. The Encumbrancee has been established for the purpose of operating the farm land portion of the Land. The Encumbrancee has a Constitution, a copy of which is attached as Appendix 1.
- D. The Constitution provides that any person who shall be a registered proprietor from time to time of the Land is required to become a shareholder of the Encumbrancee and, for so long as that person continues to be the registered proprietor of the Land, remain a shareholder of the Encumbrancee and shall abide by the Constitution and Rules of the Encumbrancee
- E. The Encumbrancers have agreed to encumber the Land for the better performance of the obligations of the registered proprietor(s) of the Land (or any part of it) from time to time to the Encumbrancee.

COVENANTS

1. The Encumbrancers hereby encumber the Land for the benefit of the Encumbrancee with a rent charge in respect of the Land being the greater of:
 - a. \$1.00 per annum (plus GST); and
 - b. 1.5 times the amount of any money of any kind or nature due and payable in accordance with the provisions of the Constitution (or which would have been due and payable if not for the breach by the relevant registered proprietor of the terms and conditions of the Constitution) as it relates to that part of the Land which the relevant registered proprietor is the registered proprietor of.

JCW

CA
JEW

2. The Encumbrancers covenant for themselves and their successors in title with the Encumbrancee during the term of this encumbrance that, upon becoming the registered proprietor of the Land or any part of the Land, the Encumbrancers shall:
 - a. Be a shareholder of the Encumbrancee;
 - b. Remain a shareholder while the registered proprietor of the Land or any part of the Land; and
 - c. Fulfill and continue to fulfill the obligations of a shareholder as set out in the Constitution and Rules including, without limitation, ensuring that any transferee of the Land executes a deed of covenant (for such covenant to be generally in the form attached or as otherwise prescribed from time to time by the Encumbrancee) in favour of the Encumbrancee agreeing:
 - i. To be and remain a shareholder while registered proprietor of the Land;
 - ii. To fulfill and continue to fulfill the obligations of a shareholder as set out in the Constitution;
 - iii. Before granting any mortgage or charge over the Land procure the intended mortgagee or chargeholder to enter into a deed of covenant with Encumbrancee covenanting to observe all the rules of the Constitution upon exercising any power as mortgagee or chargeholder.
3. Notwithstanding anything contained in clause 1 of this Encumbrance, for so long as the registered proprietor of the Land fully complies with the obligations of a shareholder pursuant to the Constitution, the rent charge reserved by the Encumbrance shall not apply to the Land.
4. Without prejudice to the Encumbrancee's rights of action at common law as a rent charger or Encumbrancee, and with the exceptions of section 104 of the Property Law Act 1952 and section 154 of the Land Transfer act 1952, none of the rights, powers, remedies and implied covenants provided pursuant to the Land Transfer Act 1952 and the Property Law Act 1952 shall apply to this Encumbrance.
5. The Encumbrancers includes the Encumbrancers' successors in title.

Schedule of Land – see attached

MCH

R. J. W.

SIGNED as a deed this 22 day of JULY 2008

SIGNED for and on behalf of:
JOHN CHARLES WASHER
MARY CAROLYN WASHER and
WASHER FAMILY TRUST LIMITED
As Encumbrancers

J.C. Washer
Signature

M.C. Washer
Signature

[Signature]
Signature

[Signature]
Signature

John Charles WASHER
Full name (please print)

Mary Carolyn WASHER
Full name (please print)

Paul Follett CARRINGTON
Full name (please print) Director

James Gregory GOEN
Full name (please print) Director

SIGNED for and on behalf of
TAPUAE COUNTRY ESTATE LIMITED
As Encumbrancee

J.C. Washer
Director's Signature

M.C. Washer
Director's Signature

[Signature]
Director's Signature

[Signature]
Director's Signature

John Charles WASHER
Director's full name (please print)

Mary Carolyn WASHER
Director's full name (please print)

Paul Follett CARRINGTON
Director's full name (please print)

James Gregory GOEN
Director's full name (please print)

* Witness to the signatures of
John Charles WASHER
& Mary Carolyn WASHER

Colleen Haw
Colleen Haw
Law Clerk
NEW PLYMOUTH

APPENDIX 2

1. Lot 1 Deposited Plan 385658 and an undivided 1/30th share in Lots 31 & 32 on Deposited Plan 385658 and being all the land contained in Certificate of Title 342917 (Taranaki Registry)
2. Lot 2 Deposited Plan 385658 and an undivided 1/30th share in Lots 31 & 32 on Deposited Plan 385658 and being all the land contained in Certificate of Title 342918 (Taranaki Registry)
3. Lot 3 Deposited Plan 385658 and an undivided 1/30th share in Lots 31 & 32 on Deposited Plan 385658 and being all the land contained in Certificate of Title 342919 (Taranaki Registry)
4. Lot 4 Deposited Plan 385658 and an undivided 1/30th share in Lots 31 & 32 on Deposited Plan 385658 and being all the land contained in Certificate of Title 342920 (Taranaki Registry)
5. Lot 5 Deposited Plan 385658 and an undivided 1/30th share in Lots 31 & 32 on Deposited Plan 385658 and being all the land contained in Certificate of Title 342921 (Taranaki Registry)
6. Lot 6 Deposited Plan 385658 and an undivided 1/30th share in Lots 31 & 32 on Deposited Plan 385658 and being all the land contained in Certificate of Title 342922 (Taranaki Registry)
7. Lot 7 Deposited Plan 385658 and an undivided 1/30th share in Lots 31 & 32 on Deposited Plan 385658 and being all the land contained in Certificate of Title 342923 (Taranaki Registry)
8. Lot 8 Deposited Plan 385658 and an undivided 1/30th share in Lots 31 & 32 on Deposited Plan 385658 and being all the land contained in Certificate of Title 342924 (Taranaki Registry)
9. Lot 9 Deposited Plan 385658 and an undivided 1/30th share in Lots 31 & 32 on Deposited Plan 385658 and being all the land contained in Certificate of Title 342925 (Taranaki Registry)
10. Lot 10 Deposited Plan 385658 and an undivided 1/30th share in Lots 31 & 32 on Deposited Plan 385658 and being all the land contained in Certificate of Title 342926 (Taranaki Registry)
11. Lot 11 Deposited Plan 385658 and an undivided 1/30th share in Lots 31 & 32 on Deposited Plan 385658 and being all the land contained in Certificate of Title 342927 (Taranaki Registry)
12. Lot 12 Deposited Plan 385658 and an undivided 1/30th share in Lots 31 & 32 on Deposited Plan 385658 and being all the land contained in Certificate of Title 342928 (Taranaki Registry)
13. Lot 13 Deposited Plan 385658 and an undivided 1/30th share in Lots 31 & 32 on Deposited Plan 385658 and being all the land contained in Certificate of Title 342929 (Taranaki Registry)
14. Lot 14 Deposited Plan 385658 and an undivided 1/30th share in Lots 31 & 32 on Deposited Plan 385658 and being all the land contained in Certificate of Title 342930 (Taranaki Registry)
15. Lot 15 Deposited Plan 385658 and an undivided 1/30th share in Lots 31 & 32 on Deposited Plan 385658 and being all the land contained in Certificate of Title 342931 (Taranaki Registry)

McW



Appendix 2 continued

16. Lot 16 Deposited Plan 385658 and an undivided 1/30th share in Lots 31 & 32 on Deposited Plan 385658 and being all the land contained in Certificate of Title 342932 (Taranaki Registry)
17. Lot 17 Deposited Plan 385658 and an undivided 1/30th share in Lots 31 & 32 on Deposited Plan 385658 and being all the land contained in Certificate of Title 342933 (Taranaki Registry)
18. Lot 18 Deposited Plan 385658 and an undivided 1/30th share in Lots 31 & 32 on Deposited Plan 385658 and being all the land contained in Certificate of Title 342934 (Taranaki Registry)
19. Lot 19 Deposited Plan 385658 and an undivided 1/30th share in Lots 31 & 32 on Deposited Plan 385658 and being all the land contained in Certificate of Title 342935 (Taranaki Registry)
20. Lot 20 Deposited Plan 385658 and an undivided 1/30th share in Lots 31 & 32 on Deposited Plan 385658 and being all the land contained in Certificate of Title 342936 (Taranaki Registry)
21. Lot 21 Deposited Plan 385658 and an undivided 1/30th share in Lots 31 & 32 on Deposited Plan 385658 and being all the land contained in Certificate of Title 342937 (Taranaki Registry)
22. Lot 22 Deposited Plan 385658 and an undivided 1/30th share in Lots 31 & 32 on Deposited Plan 385658 and being all the land contained in Certificate of Title 342938 (Taranaki Registry)
23. Lot 23 Deposited Plan 385658 and an undivided 1/30th share in Lots 31 & 32 on Deposited Plan 385658 and being all the land contained in Certificate of Title 342939 (Taranaki Registry)
24. Lot 24 Deposited Plan 385658 and an undivided 1/30th share in Lots 31 & 32 on Deposited Plan 385658 and being all the land contained in Certificate of Title 342940 (Taranaki Registry)
25. Lot 25 Deposited Plan 385658 and an undivided 1/30th share in Lots 31 & 32 on Deposited Plan 385658 and being all the land contained in Certificate of Title 342941 (Taranaki Registry)
26. Lot 26 Deposited Plan 385658 and an undivided 1/30th share in Lots 31 & 32 on Deposited Plan 385658 and being all the land contained in Certificate of Title 342942 (Taranaki Registry)
27. Lot 27 Deposited Plan 385658 and an undivided 1/30th share in Lots 31 & 32 on Deposited Plan 385658 and being all the land contained in Certificate of Title 342943 (Taranaki Registry)
28. Lot 28 Deposited Plan 385658 and an undivided 1/30th share in Lots 31 & 32 on Deposited Plan 385658 and being all the land contained in Certificate of Title 342944 (Taranaki Registry)
29. Lot 29 Deposited Plan 385658 and an undivided 1/30th share in Lots 31 & 32 on Deposited Plan 385658 and being all the land contained in Certificate of Title 342945 (Taranaki Registry)
30. Lot 30 Deposited Plan 385658 and an undivided 1/30th share in Lots 31 & 32 on Deposited Plan 385658 and being all the land contained in Certificate of Title 342946 (Taranaki Registry)

mcw

Handwritten signatures and initials in the bottom right corner of the page. There are three distinct marks: a small scribble, a large signature that appears to be 'J.P.W.', and another signature that looks like 'N'.

TAB 11

Joint Submitters' Submission — SUB24/50201.01

Patrick Cameron, for and on behalf of 8 freehold owners · February 2026

Locator references

- Part 1 — legal and ownership grounds (consent of registered proprietors; TCEL standing).
- Part 2 — planning integrity and precedent.
- Part 3 — land exchange and liability transfer.
- Part 4 — cumulative effects and intensification.
- Part 5 — process and consultation.
- Part 6 — amenity and value effects.
- Relief sought — that the application be declined.

Joint Submission under section 4(b): Matters opposed and reasons for submission

We oppose the application to vary Consent Notice 7890638.35 under section 221 of the Resource Management Act 1991.

1. Legal and Ownership Issues

- Lot 31 is owned by 30 co-owners in undivided shares.
 - Tapuae Country Estate Ltd is not a registered proprietor; it holds only a long-term lease. It therefore has no legal authority to provide landowner consent for a variation to a notice on the freehold title.
 - The lease expressly prohibits alienation or dealings with the land without the written consent of the freeholders.
 - A consent notice registered over jointly owned land can only be varied with the unanimous written consent of all registered proprietors. No such consent has been sought or obtained.
 - The application therefore seeks to alter a jointly binding title restriction without the legal authority of the owners to whom it applies.
-

2. Planning Integrity and Precedent

- The prohibition on further subdivision was imposed to preserve the low-density, open-space character of Tapuae Country Estate.
 - Varying that restriction without full co-owner consent would undermine the integrity of conditions imposed at subdivision.
 - If granted, the application would establish a precedent enabling co-owners to alter jointly owned land without the consent of all — a result inconsistent with both the intent of the consent notice and the structure of the development.
-

3. Unfair Land Exchange and Liability Transfer

- The proposal would remove flat, usable, high-value pasture from the jointly owned land and replace it with steep, vegetated, geotechnically risky land.

- This is not a like-for-like exchange; it is materially unequal and disadvantages the other owners.
 - No valuation has been provided to demonstrate equivalence of utility, condition, or market value.
 - No compensation or mitigation is proposed, despite the applicant seeking a permanent and private benefit at the expense of the collective owners.
 - The land added to the common area carries ongoing slip, stability, and maintenance obligations that all owners would be required to shoulder.
-

4. Cumulative Effects and Intensification

- The boundary realignment would result in three dwellings positioned in close proximity, generating a level of built intensity inconsistent with the original low-density design of the estate.
 - No adequate assessment has been provided of the cumulative visual, privacy, landscape, or infrastructure effects of this effective intensification.
-

5. Process and Consultation Failures

- No attempt has been made to seek the consent of the other 29 freehold owners.
 - The application relies on a landowner-consent signature from Tapuae Country Estate Ltd, despite the company not being the owner and having no authority to consent to variations of the freehold title.
 - Presenting TCEL's signature as landowner consent is materially misleading and risks giving NPDC an incorrect impression about landowner support.
 - Neither the applicant nor the Board has undertaken meaningful engagement or transparency with affected owners.
 - The application repeats the deficiencies of the earlier, declined boundary-adjustment proposal, including attempting to proceed without the lawful consent of the freeholders.
-

6. Amenity and Value Effects

- The proposal would permanently diminish the shared rural pasture amenity available to all owners.

- Fragmenting the jointly owned land reduces its utility, flexibility, and long-term value and alters the character of the development.
 - Once incorporated into Lot 31, the land cannot realistically or legally be restored to common ownership.
-

Relief Sought (Section 4(d))

We respectfully request that the application be declined in full.

This is not a minor technical variation. It is a proposal by one co-owner to permanently alter jointly owned land without legal authority, without the consent of the other proprietors, and to the detriment of the estate's established character and the rights of the other owners.

The applicant remains free to pursue a variation under section 221, but only with the unanimous written consent of the registered proprietors of Lot 31, as required by law.

Signed

Patrick Cameron

For and on behalf of the Joint Submitters – Freehold Owners of Tapuae Country Estate:

Philip Pryde & Robin Marshall (Section 2)

Richard & Lorette Rayner (Section 13)

Brent & Maree Schumacher (Section 14)

Brenda Moore (Section 15)

Maria Vosper-Rink (Section 19)

Barbara Cameron & Deborah Williams (Section 21)

Steve & Fiona Frowde (Section 22)

Patrick Cameron & Randy Buckley (Section 23)

Jimmy & Denise Seed (Section 24)

TAB 12

Submission — SUB24/50201.01

Emma Bennett-Lawn and Joe Lawn (registered co-owners of Lot 31) · February 2026

Locator references

- Position — support the boundary adjustment in principle only if all 30 registered owners agree; otherwise oppose and seek decline.
- Raises the requirement for unanimous landowner consent and TCEL's standing to consent on behalf of freeholders.
- Relief sought — consent granted only on condition all 30 owners agree; failing which, declined.

SUB24/50201.01 Submission from Emma Bennett-Lawn and Joe Lawn

4b. Please specify below:

- i. The matters within the application you support or oppose, or wish to comment on.
- ii. The reasons for making this submission (please give precise details).

We are a registered owner of Lot 31, which is jointly owned by 30 individual shareholders.

We support the proposed boundary adjustment between Lot 20 (Washer Family Trust) and Lot 31 in principle, subject to the agreement of all 30 registered owners of Lot 31 being obtained.

If unanimous consent from all owners of Lot 31 is not obtained, we oppose the application and submit that resource consent must not be granted.

Lack of Unanimous Landowner Consent

The proposed boundary adjustment would permanently alter the extent, use, and value of land over which all 30 owners of Lot 31 currently hold legal rights. As such, the consent of every registered owner is required.

An individual owner holding even a 1/30th share of Lot 31 cannot be compelled to relinquish land in these circumstances without their express consent.

It is of significant concern that the applicant continues to seek approval for the proposed boundary adjustment despite not having obtained the agreement of all 30 registered owners of Lot 31. Advancing an application that relies on the permanent transfer of land owned by multiple parties, without first securing the consent of those parties, is inappropriate and risks misleading the NPDC as the consent authority as to the true level of landowner support for the proposal.

Further, the application appears to proceed on the basis that approval from the Board of Tapuae Country Estate Limited is sufficient to bind all owners of Lot 31. This is incorrect. The directors of TCEL do not have legal standing to consent to a boundary adjustment on behalf of individual shareholders where that adjustment permanently affects land ownership and use. On this matter, the law is clear.

Material Disadvantage to Owners of Lot 31

The proposal would result in owners of Lot 31 exchanging productive farmland for land within Lot 20 that is described as slip-prone and of limited utility. At face value, this creates:

- A material disadvantage to owners of Lot 31, and
- A corresponding benefit to the owners of Lot 20.

If the Council were to consider that a boundary adjustment could proceed without unanimous consent (which is not accepted), then the relative value of the land parcels being

exchanged would need to be rigorously assessed and any imbalance mitigated through appropriate compensation. No such mitigation is currently proposed.

Amenity and Use Effects

Consistent with prior NPDC determinations on similar matters, the proposed boundary adjustment would have significant and permanent adverse effects on the amenity values of owners of Lot 31 who do not consent.

These effects include:

- Loss of land currently accessible and usable for its agreed common purpose,
- Reduced utility, productivity, and flexibility of the landholding, and
- Permanent alteration of land rights that cannot be easily reversed.

Once established, the effects of a boundary adjustment are enduring and not readily undone. For owners who do not consent, the proposal would permanently impact their use and appreciation of the land. As noted in earlier determinations, where adverse effects are significant, permanent, and cannot be mitigated or remedied, consent should not be granted.

4d. Please specify details of the decision you seek from the Council, including the parts of the application you wish to have amended and the general nature of conditions sought:

We seek the following decision from the Council:

That resource consent be granted only on the condition that written agreement from all 30 registered owners of Lot 31 is obtained prior to the boundary adjustment proceeding.

If agreement from all 30 owners is not obtained, the application must be declined.

This condition is necessary to ensure:

- The protection of individual property rights,
- The maintenance of amenity values for all affected owners, and
- That the Council does not approve a subdivision that permanently disadvantages non-consenting landowners.

TAB 13

Independent Legal Advice — Duncan Laing

Prepared for Commissioner M. St Clair · 14 October 2025 · ECM 9602521

Locator references

- [42] — concludes the boundary adjustment is a subdivision of land under s218(1)(a) requiring subdivision consent.
- [43]–[45] — identifies two restrictions in Consent Notice 7890638.35: (a) no further subdivision; (b) no disposition except in conjunction with Lots 1-30.
- [46]–[63] — interpretation of the consent notice.
- [64]–[65] — concludes the consent notice prevents the disposition and must be varied or cancelled before the subdivision application can proceed.

Prepared for Commsioner Mark St Clair
Prepared by Duncan Laing
Date 14 October 2025

Washer Family Trust - Subdivision - Tapuae Country Estate

Background

1. I have been asked by the New Plymouth District Council to provide advice to Commissioner Mark St Clair arising out of some procedural matters that have arisen during the hearing of a subdivision and land use consent application by the Washer Family Trust.¹
 2. In summary, the Commissioner has raised some issues about the effect of Consent Notice No 7890638 (**Consent Notice**), being a consent notice registered against the records of title for Lots 31 and 32 DP 385658,² in terms of the further processing and decision making relating to the subdivision consent application.
 3. I have carefully considered the Applicant's submissions dated 3 October 2025 (**Applicant's submissions**) and the cases referred to those submissions. I have not found it necessary to refer to all the cases referred to in those submissions, especially as part of the submissions cover caselaw dealing with a review of the consent notice or an application to vary it.³
-

Questions and Short Answers

4. Do the boundary adjustments as sought by the applicant and shown on Scheme Plan W-211212-RC01 Sheet 2 (Appendix A to its resource consent application), involve a *subdivision of land* as defined by section 218(1) of the Resource Management Act 1991 (**RMA**) and therefore require a subdivision consent under section 11(1) of the RMA?

Yes, a subdivision consent is required.

5. Does Consent Notice 7890638.35 as registered against the record of title for Lot 31 DP 385658 prevent a boundary adjustment application in respect of that lot from proceeding without the consent notice being first varied (or cancelled)?

Yes, the consent notice would need to be varied or cancelled before the boundary adjustment application can proceed.

¹ For those issues, see the Commissioner's Minutes Nos 3- 5.

² Lot 31 is the relevant lot for present purposes.

³ See Section 4 of the Applicant's submissions.

Reasoning explained

Do the proposed boundary changes involve a subdivision of land under the Resource Management Act 1991?

The Legislation

6. The starting point is section 11 of the RMA which provides for restrictions on subdivision. Section 11(1)(a) is as follows:
 - (1) No person may subdivide land, within the meaning of section 218, unless the subdivision is
 - (a) first, expressly allowed by a national environmental standard, a rule in a district plan as well as a rule in a proposed district plan for the same district (if there is one), or a resource consent; and second is shown on one of the following:
 - (i) a survey plan, as defined in paragraph (a)(i) of the definition of survey plan in section 2(1), deposited under Part 10 by the Registrar-General of Land; or
 - (ii) a survey plan, as defined in paragraph (a)(ii) of the definition of survey plan in section 2(1), approved as described in section 228 by the Chief Surveyor; or
 - (iii) a survey plan, as defined in paragraph (b) of the definition of survey plan in section 2(1), deposited under Part 10 by the Registrar-General of Land;
7. Under section 11(1)(a), a subdivision must first be expressly allowed by a national environmental standard, a rule, or a resource consent, and secondly be shown on a *survey plan* as defined in section 2(1) of the RMA.
8. The relevant part of the definition of *survey plan* in section 2(1) refers to a cadastral dataset of subdivision of land.⁴ Once a resource consent is approved, section 223 of the RMA contains the procedure for the approval of a *survey plan* (as defined).
9. A consent to do something that would otherwise contravene section 11, is a subdivision consent under section 87 of the RMA.
10. In the present case, for the purposes of section 11(1)(a), the proposed boundary adjustment subdivision activity itself is a controlled activity under both the partially operative New Plymouth District Plan (**PODP**)⁵ and the 2019 National Planning Standards (NPS 2019).⁶ However, because of the operation of other subdivision rules such as coastal environment, sites on or adjacent to natural water, and sites of significance to Māori, the boundary adjustment proposal becomes a discretionary activity.
11. *Boundary adjustment* in the PODP is defined as having the same meaning as prescribed in the NPS 2019, and a *boundary adjustment* is defined in the NPS 2019 as meaning a subdivision that alters the existing boundaries between adjoining allotments, without

⁴ It seems quite clear that none of the exceptions in paragraphs (b) to (d) of section 11(1) apply in the present case.

⁵ I understand all relevant subdivision rules are operative.

⁶ See Rule SUB-R1 in the District Plan and Section 14 of the NPS 2019.

altering the number of allotments. *Allotment* and *subdivision [of land]* are also defined in the NPS 2019 as having the same meaning as in section 218 of the RMA set out below.

12. *Subdivision of Land* is defined in section 218(1) of the RMA. Relevantly section 218(1)(a) provides as follows:
- 1) In this Act, the term **subdivision of land** means-
 - (a) the division of an allotment-
 - (i) by an application to the Registrar-General of Land for the issue of a separate record of title for any part of the allotment; or
 - (ii) by the disposition by way of sale or offer for sale of the fee simple to part of the allotment; or
 - (iii) by a lease of part of the allotment which, including renewals, is or could be for a term of more than 35 years; or
 - (iv) by the grant of a company lease or cross lease in respect of any part of the allotment; or
 - (v) by the deposit of a unit plan, or an application to the Registrar-General of Land for the issue of a separate record of title for any part of a unit or a unit plan;
13. As noted by the Environment Court in *Re McKay*⁷ the five methods listed in section 218(1)(a) are not equivalent with each other except as being types of subdivision and they are discrete and different in kind to one another, such that it would be incorrect to treat them as equivalent and interchangeable options for subdivision.
14. In a similar manner, the High Court in *Cleanspan Property Assets Ltd v Spark New Zealand Trading Limited*⁸ noted that Parliament had adopted an exhaustive list of specified and relatively certain legal means of subdivision by using different techniques in relation to “part of” an allotment or unit.⁹
15. *Allotment* is in turn defined in section 218(2) of the RMA. Section 218(2)(a) is as follows:
- (2) In this Act, the term **allotment** means-
 - (a) any parcel of land under the Land Transfer Act 2017 that is a continuous area and whose boundaries are shown separately on a survey plan, whether or not-
 - (i) the subdivision shown on the survey plan has been allowed, or subdivision approval has been granted, under another Act; or
 - (ii) a subdivision consent for the subdivision shown on the survey plan has been granted under this Act;
16. The various sections of the RMA outlined above must also be considered in conjunction with section 226(1) of the RMA which restricts the Registrar-General from issuing separate records of title for any land shown as a separate allotment on a survey plan to give effect to the subdivision shown on that survey plan unless he or she is satisfied that one of paragraphs (a) to (e) of section 226(1) apply.

7 [2019] NZRMA 134 at [46].

8 [2017] NZC 277.

9 At [56] to [57].

17. Section 226(1)(a) is as follows:

- (1) The Registrar-General of Land shall not issue a record of title for any land that is shown as a separate allotment on a survey plan (being a certificate issued to give effect to the subdivision shown on that survey plan), unless he or she is satisfied, after due inquiry, that-
- (a) the plan has been deposited in accordance with section 224 or has been approved by the Chief Surveyor for the purposes of section 228 and the provisions of section 228(2) have been complied with;

18. Looking at the current records of title for Lots 20 and 31 DP 385658, it seems incontrovertible that both contain *allotments* as defined in section 218(2).

19. Returning to section 218(1)(a), it also seems clear on the face of that provision that the division of both lots respectively into two separate areas of land will involve applications to the Registrar-General of Land for separate records of title for parts of both the two parent lots or allotments.¹⁰

20. While the two areas to be transferred on the scheme plan forming part of subdivision consent application are not currently given lot numbers, any survey plan submitted for approval under section 223 will be required to have separate lot numbers for those areas allocated to it.¹¹

The Principles of Interpretation

21. I agree that the starting point under Section 10 of the Legislation Act 2019 is that the meaning of an enactment must be ascertained from its text and in light of its purpose and that the consideration of the purpose is a cross-check rather than a starting point.¹²

22. The Environment Court in *Re McKay*¹³ after referring to the various definitions in section 2(1) and sections 11, 87, 106, 218, and 226 of the RMA, stated as follows:

- [30] These provisions contain several interlocking connections. Important points to note are:
- (a) The RMA provides a complete code for the control of subdivision land in New Zealand.
- (b) The correct approach to statutory construction is that the meaning of an enactment must be ascertained from its text and in the light of its purpose. Consideration of the purpose is a cross-check rather than the starting point.
- (c) The text of the RMA in relation to subdivisions is relatively crystalline, using transactional language containing precise metes and bounds, and listing the forms of subdivision which are regulated.
- (d) A cross lease is by definition in s 2 the lease of all or part of a building held by a person who has an estate or interest in the land on which the building is or is to be erected; it is not a lease of that land.

¹⁰ In this context, Section 218(4) deems the balance of allotment to be a separate allotment. This was previously of particular importance when under prior survey rules a balance area did not require to be given a new lot number.

¹¹ See Rules 42 and 43 of the Cadastral Survey Rules 2021.

¹² See the Applicant's submissions at 3.3.

¹³ [2019] NZRMA 134.

- (e) For present purposes, a subdivision of land involves either:
- (i) the division of an allotment by one of five specified methods in s 218(1)(a); or
 - (ii) an application for a separate certificate of title for land shown as a separate allotment on a survey plan, unless that plan already comes within one of the ten categories listed in s 226(1), being the ways in which survey plans are formally approved, whether for deposit under the Land Transfer Act or otherwise.
- (f) Some circularity arises because of the inclusion of "subdivision" in the definition of "survey plan" and the connections among the definitions of:
- (i) a subdivision, being the division of an allotment; and
 - (ii) an allotment, being a parcel of land of continuous area, the boundaries of which are shown separately on a survey plan; and
 - (iii) a survey plan, being a plan of subdivision of land.

The circularity may be overcome by treating the reference to subdivision in the definition of survey plan be treated as simply a division of land.

[31] Taking these points into account and conscious of the dangers of summarising or paraphrasing complex statutory provisions, this set of provisions might be summarised in very broad terms for present purposes as being that no person may divide a parcel of land of continuous area and whose boundaries are shown separately on a survey plan by applying for a separate certificate of title for part of that parcel unless allowed by a district rule or a resource consent and as shown on a survey plan suitable for deposit under the Land Transfer Act 1952.

23. In the present case, as in the *McKay* case, the paragraph within section 218(1) of actual or potential relevance here, is section 218(1)(a). Breaking down the constituent aspects as outlined in the quotation above at [31], the following questions can in my view be asked and answered yes here:
- Is there to be a division of a parcel or parcels of land of continuous area and whose boundaries are shown separately on a survey plan?
 - Is there intended to be an application for separate records of title for parts of those parcels?
 - Is the division outlined above intended to be allowed by a resource consent and as shown on a survey plan suitable for deposit under the Land Transfer Act.¹⁴
24. The Environment Court in the *McKay* case ultimately concluded the conversion of a cross leased property to fee simple necessarily required the division of an allotment into two or more new allotments. It therefore constituted the division of a parcel of land shown separately on a survey plan and was a subdivision of land within the meaning of section 218(1)(a) of the RMA.¹⁵

¹⁴ Now the Land Transfer Act 2017.

¹⁵ See the *McKay* case at [40]-[43].

25. The Environment Court further concluded:

[55] The short point that can be made in the relatively abstract circumstances of this application is that while it is clear in my judgment that the conversion of a cross leased property to separate freehold titles is a subdivision of land and requires a subdivision consent, the consent authority should generally approach such an application in a way that is **mindful of the possibility that there may be few, if any, material environmental implications warranting a full-scale assessment of the proposal as if it were a new development. As the Court of Appeal has noted:**¹⁶

The concern of s 218 of the Act is not therefore with land transactions unlikely to intensify development and thereby neither increase the density of occupation nor impact adversely on infrastructure and other amenities.

(Emphasis added)

26. The Applicant places significant reliance in the Court of Appeal's decision in the *Clearspan* case¹⁷ and the *McKay* case¹⁸ to support the proposition that the:

way that the term "subdivision" has been interpreted by the Courts, supports the proposition that a boundary change, as proposed, which has no environmental effects, is not subdivision for the purposes of the RMA.¹⁹

27. In other words, while the subdivision in this case on its face falls within the plain meaning of *subdivision of land* under section 218(1)(a), should this provision be read down or qualified so that a boundary adjustment which the Applicant says has no environmental effects is not a subdivision for the purposes of the RMA?²⁰

28. There are some immediate issues with the position advanced by the Applicant in this case:

- It has actually made an application for a subdivision consent, and this has been processed by the Council to the stage of a hearing before a commissioner appointed by the Council.
- The division of land by boundary adjustments are expressly contemplated by the PODC, and by the NPS 2019.
- If there was any another lawful pathway to completing the boundary adjustments by the deposit of a survey plan and the issue of new records of title, the Applicant would surely have taken it. The RMA is a code relating to subdivision.
- Section 226 seems to be a related barrier in this situation to obtaining new records of title outside the subdivision consent application process under the RMA.

16 *Spark New Zealand Trading Ltd v Clearspan Property Assets Ltd*, above n9, at [24].

17 *Spark New Zealand Trading Ltd v Clearspan Property Assets Ltd* [2018] NZCA 248.

18 See above.

19 See paragraph 3.1 of the Applicant's submissions.

20 I note that the Applicant at Section 3 of its submissions is putting forward its interpretation of *subdivision of land* as supporting a wider submission the consent notice does not prohibit the boundary adjustments in this case.

- It is yet to be determined whether there are any environmental effects associated with the boundary adjustment and, if so, the scope and significance of those effects. The Applicant's approach would seem to involve some form of preliminary determination whether there were any effects or any material effects associated with the proposed division of one or more allotments.

Caselaw

29. I now propose to address the caselaw relied on by the Applicant in more detail. The starting point is the High Court's decision in the *Clearspan* case.²¹ The High Court summarised its conclusions as follows:

[3] I find the arrangement here is an artificial contrivance to achieve a similar substance and effect to division of fee simple ownership without falling within s 218. But s 218 defines the subdivisions of land to be regulated by the RMA specifically and exhaustively. In referring to fee simple to part of an allotment, s 218(1)(a)(ii) invokes long-established property law concepts. *Clearspan's* arrangement is not, technically, within those concepts. I consider it would strain the words of the statute too much to interpret Parliament's specific and exhaustive definition, referring to well-known and relatively certain property law concepts, as extending to these arrangements, even using a purposive approach to interpretation.

30. The Court went on to say that despite the importance of a purposive interpretation, such an interpretation cannot change the text itself and does not justify an interpretation which is inconsistent with text. The High Court accordingly found that the arrangements in that case fell outside what the Court found was a relatively tight definition of subdivision:

[54] There is force to Mr Casey's submission that Parliament's purpose in passing the RMA was to regulate all modes of subdivision and the courts should honour that through purposive interpretation of s 218. Parliament itself has mandated a purposive interpretation of statutes in New Zealand, in s 5(1) of the Interpretation Act 1991 which instructs the courts to ascertain the meaning of an enactment "from its text and in light of its purpose". This has been given emphasis in the often-cited passage by the Supreme Court in *Commerce Commission v Fonterra Cooperative Group Ltd* that "[e]ven if the meaning of the text may appear plain in isolation of purpose that meaning should always be cross checked against purpose in order to observe the dual requirements of s 5".²² And the potential effects of inappropriate subdivision on land use provide a potential reason for Parliament to provide an expansive definition of subdivision in the RMA.

[55] **But there are limits to the capacity of a purposive approach to expand on the text of law. Meaning is ascertained "from" its text and only "in light of" its purpose. I agree that "purpose is there to help ascertain the meaning of text and not to override or dominate it".²³ The Supreme Court emphasises the starting point is the text. A court's view of Parliament's purpose is across-check. That can lead to ambiguity being interpreted in line with Parliament's purpose. But it cannot change the text itself and does not, in my view, justify judicial interpretation that is inconsistent with the text.** The rule of law must still stand for the proposition that it is the law that rules, not those who make the law or apply the law or interpret the law. The law is the text. In the search for certainty of meaning the statutory text cannot be stretched beyond breaking point.

²¹ See above.

²² *Commerce Commission v Fonterra Cooperative Group Ltd* [2007] NZSC 36, [2007] 3 NZLR 767 at [22].

²³ Justice Susan Glazebrook "Do they say what they mean and mean what they say? Some issues in statutory interpretation in the 21st century" (2015) 14 *Otago Law Review* 61 at 67-68.

(Emphasis added. Footnotes aligned to this advice.)

31. The Court of Appeal dismissed an appeal against the High Court decision. It referred to the High Court’s reasoning with approval.²⁴ In particular, the Court of Appeal:
 - Adopted the High Court’s approach to statutory interpretation as outlined above;
 - Noted that the potential effects of inappropriate subdivision provide a potential reason for Parliament to provide an expansive definition of “subdivision” in the RMA; and
 - Further noted agreeing with the High Court that the text was relatively crystalline or tight and that Parliament has chosen transactional language in section 218 that contains precise metes and bounds. Not every “division of an allotment” or interest in land qualifies.
32. Putting aside for one moment the matters outlined in paragraph 28 above, in my view the text of section 218(1)(a) is clear and precise on its face and a cross-check of its purpose as outlined in the High Court and Court of Appeal does not justify an interpretation that is inconsistent with the text itself.
33. In my view, there is no ambiguity in the words of the text itself, and it would be going beyond the limits of a purposive approach to read down the words of section 218(1)(a) in the manner proposed by the Applicant.
34. The Applicant’s submissions take a different approach. It says that a boundary change is not a “transactional” subdivision under the RMA. Some of the passages in the Court of Appeal’s decision particularly relied on by the Applicant are contained in the following passages:

[24] Thirdly, it is reasonably clear to us why Parliament chose a precise transactional definition in s 218(1). It was not seeking to capture each and any interest created in land, but only those transactions with material environmental implications. As Randerson J observed in *Kitewaho*, subdivisions have physical effects, **including more intensive use of land and communal infrastructure services, and precedent effects.**²⁵ **It is these matters, in particular the intensity and scale of use of land, that the RMA regulation of subdivisions is concerned with and which s 218 focuses upon. It does so by regulating certain land transactions; those that carry the greater risk of intensifying the use of land and services, and of impairing amenities.** Typically, district plans establish land use controls governing minimum lot sizes and the density of occupation thereof. **The concern of s 218 is not therefore with land transactions unlikely to intensify development, and thereby neither increase the density of occupation nor impact adversely on infrastructure and other amenities.** The reasonably short-term lease originally entered by Spark was not s 218’s concern, because it did not affect these considerations. Nor, it might be thought, would a transaction not materially different in its *environmental* implications from that lease. Neither that lease nor the arrangement between the Goldwaters and Clearspan would in practice facilitate intensified development.

²⁴ See [22] to [23].

²⁵ *Waitakere City Council v Kitewaho Bush Reserve Co Ltd* at [99].

[25] Fourthly, we turn then to the application of the plain meaning of s 218(1)(a)(ii) to this arrangement. The issue here is the legal effect of the arrangement entered. If we have a criticism of the analysis in the Environment Court, and of Mr Casey’s argument, it is that they focused unduly upon perceived purpose (being to avoid the application of s 218) rather than the legal effect of the arrangement.

(Applicant’s emphasis added. Footnotes aligned to this advice.)

35. In my view, these passages when read in context, do not support the Applicant’s position that the boundary adjustment in this case does not involve a *subdivision of land* as defined in section 218(1). The Court of Appeal concluded that the arrangement in that case did not amount to a *subdivision of land* based on the approach to statutory interpretation outlined by it and the High Court.²⁶ A similar approach to statutory interpretation should in my view be applied to section 218(1)(a).
36. The two passages set out above from the Court of Appeal’s decision start with noting that it was reasonably clear as to why Parliament chose a *precise* transactional language in section 218 as it was not seeking to capture each and every interest in land but only those (identified by Parliament) with material environmental implications.
37. In other words, I consider that the Court of Appeal is saying that Parliament has identified certain transactions in section 218(1) considered to have those implications or as it later noted, the RMA regulates certain land transactions that carry the greater risk of intensifying the use of land and services, and impairing amenities. This does not in my view support the proposition that a subdivision (in this case a boundary adjustment) otherwise falling within the “metes and bounds” of section 218(1)(a) should be excluded from that provision if it is found to have no or no material effects.
38. A further passage that the Applicant in its submissions²⁷ relies on, relates to a statement by the Court of Appeal that typically district plans establish land use controls, and the concern of section 218 is not with land transactions *unlikely* to intensify development and thereby neither increase the density of occupation nor impact adversely on infrastructure and other amenities.
39. Again, I do not read this passage as supporting the view that a subdivision if found on its facts to not involve any or any material effects, does not constitute a subdivision under section 218(1)(a).²⁸
40. Finally, and consistent with my own analysis outlined above, in my view the question as to whether there are any effects on a subdivision application and if so the extent of those effects, are properly matters for assessment in each case in light of the available evidence, and not some initial threshold level.

26 At [21] and [25].

27 Applicant’s submissions at 3.10 to 3.10.

28 I note that in the present case, it is yet to be ultimately determined by the Commissioner whether the subdivision application involves any such effects. I have therefore not expressly dealt with this aspect of the Applicant’s submissions at 3.7 to 3.12, and do not consider that I need to do so.

41. In *Re McKay*,²⁹ the Environment Court dealt with some subsidiary issues including the detail of the assessment of effects that would be required in that case.³⁰ I have referred to the relevant passage at paragraph 25 above. In my view, that passage reflects the proper approach to be adopted to a subdivision consent application where there may be few if any effects on the environment.

Summary

42. In summary, I conclude that the boundary adjustment division of both Lots 20 and 31 into 2 allotments each, involves a subdivision of land under section 218(1)(a) and requires a subdivision consent.

Does the Consent Notice need to be varied or cancelled to allow the subdivision consent application to proceed?

Section 221

43. Sections 221(3) and 221(3A) of the RMA contain the process for varying or cancelling consent notices. Prior to enactment of the Resource Management (Simplifying and Streamlining) Amendment Act 2009, a consent notice could be cancelled by agreement and without further formality apart from registration under section 221(5). Cancellation by agreement is no longer an available statutory procedure.

The wording of the Consent Notice

44. The Consent Notice provides in part as follows:

That Lots 31 & 32 shall not be further subdivided and shall not be disposed of other than in conjunction with Lots 1-30 inclusive.

45. There are two separate restrictions in this consent notice. Firstly, no further subdivision is allowed, and secondly, the two lots shall not be disposed of except in conjunction with Lots 1-30.

Interpretation of Resource Consents

46. There is a significant amount of case authority on the interpretation of resource consents.³¹

47. The *Brookers Resource Management* text summarises the position as follows:

In *Manukau CC v Warren Fowler Ltd* EnvC C124/98, the Environment Court held that: "if there is an overriding principle for the construction of a resource consent it is that it has to be interpreted in the factual matrix (circumstances) at the time it was granted and so as to reflect the purposes and the duties imposed by the Act." See also *Clevedon Protection Soc Inc v Warren Fowler Ltd* (1997) 3 ELRNZ 169 (EnvC), and *Birchfield Minerals Ltd v West Coast RC* EnvC C173/03.

29 See above.

30 At [55].

31 See *Brookers Resource Management*, at Note A104.18(2).

The Court set out the following guidelines for establishing what those circumstances are:

- (i) So far as possible the consent should be interpreted upon its face subject to consideration of matters raised below;
- (ii) Where possible, the words used should be given their ordinary meaning, so that they may be understood by the general public: *Stop CRA Pollution (SCRAP) Inc v NZ Refining Co Ltd* (1993) 2 NZRMA 586 (PT);
- (iii) The consent may be qualified by the wording of the wider application, as discussed in *Clevedon Protection Soc* (above);
- (iv) A land use consent needs to be read in the context of the rule that required that consent be obtained. Other resource consents may also need to be read in the context of statutory instruments. There is no express authority for this guideline, but it is taken for granted, eg *Hutt CC v Turnbull* (1993) 2 NZRMA 553 (PT);
- (v) The Court may have regard to special meanings of a particular industry: *Stop CRA* (above);
- (vi) Regard should be had to the purposes of the Act (*Stop CRA*) although care should always be taken not to work backwards from adverse effect so as to define them out of the word being constructed; and
- (vii) The use of affidavits to establish meanings is generally discouraged because interpretation is a question of law, not fact.

48. The starting point is the ordinary meaning of the wording itself. The dictionary meanings of *subdivision* include:

- Any of the parts into which something is divided.³²
- Something produced by subdividing: such as a tract of land surveyed and divided into lots for the purpose of sale.³³
- An area of real estate subdivided into individual lots.³⁴

49. These definitions would suggest that the Consent Notice, if given its ordinary meaning, should be interpreted as prohibiting subdivision generally. There is nothing to suggest on the face of the Consent Notice that some specific forms of subdivision (such as boundary adjustments as defined) should be excluded from its scope either by express words or necessary implication.

50. Further, the words *shall not be further subdivided* indicate that the consent notice is referring back to the 2006 subdivision itself which was a subdivision under the RMA. This in turn would suggest that the consent notice must also be taken as referring to a subdivision as

32 The Cambridge Dictionary.

33 The Merriam-Webster Dictionary.

34 The Free Dictionary.

defined in the RMA. In any event, and as I have already noted,³⁵ the RMA is a code relating to subdivision, there is no other legal mechanism to achieve the division of allotments by way of boundary adjustment in the present circumstances.

51. Looking at the immediate context, this includes what might have been said in the subdivision consent decision in 2006 on the topic, given that the Consent Notice is derived from a condition of consent.
52. However, the 2006 subdivision consent decision which gave rise to the consent notice condition, does not discuss the reasons why a condition requiring the consent notice was imposed. In these circumstances, the 2006 subdivision consent decision does not assist in the interpretation of the consent notice.
53. Turning to other guides to interpretation, the Consent Notice should be read in the context of the rules in the PODP that expressly provides for boundary adjustments as discussed above. It would be a surprising proposition if a boundary adjustment subdivision required a consent under the RMA, as I have concluded above, but not for the purposes of the Consent Notice which simply prevents further subdivision.
54. Also, in terms of the purpose and duties of the RMA to the extent that they might be relevant here, in my view firstly the purpose of the RMA would be best served by the Consent Notice applying generally to the subdivision of land as defined in section 218(1), and secondly the duties under the RMA requiring the obtaining of subdivision consents, do not support the reading down of the Consent Notice.
55. I now turn to the remaining words in the Consent Notice- *shall not be disposed of other than in conjunction with Lots 1-30 inclusive*. Relevant dictionary meanings for *disposed of* include:
 - To transfer to the control of another.³⁶
 - To give, sell, or transfer to another.³⁷
56. On its face, the boundary adjustment in relation to the land to be transferred from Lot 31 involves a disposition that is not made *in conjunction with* Lot 20. Rather, it would involve a disposition of land to be added to the land in Lot 20. The apparent intention behind this part of the Consent Notice is to prevent Lot 20 and an undivided share of lots 31 and 32 from being transferred *except* in conjunction with each other.
57. I have given consideration as to whether there is any basis to interpret that restriction in the Consent Notice in a manner that would not apply in the present circumstances, but I do not consider that based on the conventional approaches to interpretation, there is any basis for doing so.

35 At paragraph 28.

36 Merriam-Webster Dictionary.

37 Collins Dictionary.

The Applicant's submissions

58. I now comment on the Applicant's submissions relating to the interpretation of the Consent Notice in so far as those submissions relate to the words *shall not be further subdivided*.
59. At Section 2 of its submissions, the Applicant in summary advances the proposition that on a plain, non-technical reading the phrase no further subdivision in the consent notice for lot 31 can be interpreted as a prohibition on the creation of *additional* allotments.³⁸
60. I respectfully do not accept that proposition for reasons outlined above. In particular, I do not agree that the Consent Notice can be interpreted in that manner having regard to its express words and to the usual guidelines of statutory interpretation.
61. However out of deference to the Applicant's specific submissions at paragraphs 2.1 to 2.10, I comment as follows:
- I accept that the Consent Notice was intended to prevent Lot 31 being further subdivided, but not that the Consent Notice was intended to restrict the boundary adjustments as is suggested by the Applicant, by reference to what might or might not have been the intentions of the developer at the time. This goes well beyond the conventional basis for interpretation of resource consents.³⁹
 - The fact that the Consent Notice was first imposed in the resource consent decision in 2006 after some thirty lots were created, does not in my view justify the inference the Consent Notice should be given a restrictive interpretation.⁴⁰
 - I accept that the Consent Notice should be understood in light of the resource consent⁴¹ but as I have already noted above, there is nothing in the consent decision that would justify the interpretation of the Consent Notice contended for by the Applicant.
 - The passages from the Environment Court's decision in *Lakes District Rural Landowners Society Incorporated v Queenstown Lakes District Council*,⁴² if anything support the proposition that the Consent Notice should not be read down as excluding some forms of subdivision, which depending on the circumstances, may have effects on the management of resources.
 - Related to the last point, if the approach contended for by the Applicant was adopted, every boundary adjustment subdivision would be excluded from the ambit of the Consent Notice despite the size, shape, and any other actual or potential environmental effects resulting from the resultant allotments.
62. At section 3 of its submissions, the Applicant makes a further submission to support the submissions made in section 2. This is to the effect that the way the term "subdivision" in the RMA has been interpreted by the Courts, supports the proposition that a boundary change, as proposed, which (according to the Applicant) has no environmental effects, is not a subdivision for the purposes of the RMA.⁴³

63. I consider that I have already fully set out my own understanding as to how *subdivision of land*, as defined in section 218(1) of the RMA, should be interpreted, and how it should be applied in the present circumstances.⁴⁴ In so doing, I have commented where necessary on the Applicant's submissions in section 3 and I do not need to repeat those comments here.

Conclusions.

64. Given all the factors outlined above, I do not consider that there is any proper basis for reading down the Consent Notice wording so that it does not extend to boundary adjustments that do not create additional allotments. I further consider that the Consent Notice prevents the proposed disposition of allotments to give effect to the boundary adjustments.

65. Accordingly, I am of the view the Consent Notice would need to be varied or cancelled before the subdivision consent application can proceed further.

Duncan Laing



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38 At 2.11.

39 At 2.1 to 2.3.

40 At 2.5 to 2.8.

41 At 2.9.

42 At 2.10.

43 See paragraphs 3.1 to 3.12.

44 See paragraphs 6 to 41 above.

TAB 14

Commissioner's Minute #8

Independent Commissioner M. St Clair · 18 November 2025

Document Set ID 9646416 · SUB24/50201

Locator references

- [16]–[17] — finds the boundary adjustment is a subdivision of land under s218(1) requiring subdivision consent.
- [20] — finds Consent Notice 7890638.35 prevents the disposition; the consent notice must be varied or cancelled before the application can proceed.
- [25]–[26] — finds no jurisdiction to vary the consent notice within the subdivision application; s221 is a separate statutory process.

Directions/Minute of the Commissioner #8
LUC24/48662 and SUB24/50201
Application for Washer Family Trust Limited
1 and 9 Washer Road, Omata

1. As set out in Minute #3, I received material handed up the “Joint Submissions by 8 Freehold Residents” (Joint Submission) which was distributed to the parties, and at section 3 on Page 2, the Joint Submission references, *“The Residential and Building Covenants include an express prohibition on further division or subdivision.”*. The Joint Submission also referring to LINZ Instrument 7890638.42 (Encumbrance) with a copy attached. As a procedural matter before the commencement of the hearing the next day, I sought that the Applicant address a number of questions as to the record of title, the nature of any restrictions on further subdivision (consent notices), had an application to vary or cancel any consent notice been made and what process should be followed (see Para 5 of Minute #3).
2. Mr Young (Counsel for the Applicant Washer Family Trust Limited) addressed those matters in oral submissions at the hearing and responded to my questions. As set out in Minute #4, I summarised the position advanced by Mr Young noting that, *“the boundary adjustment being applied for was not within the definition of “subdivision” in the Resource Management Act (RMA), and as such an application to amend the consent notice under section 221 of the RMA was not required. Mr Young helpfully filed those oral submissions in writing which provide the full reasoning and they have been placed on the hearing website <https://www.npdc.govt.nz/council/hearings/2025/october/washer-family-trust-limited/>.”*¹
3. As advised at the hearing and set out in Minute #4, I sought independent legal advice on the Applicant’s position, and also signalled the provision of the opportunity for the submitters and section 42A reporting officer to respond to the independent legal advice and for Applicant to have the final response.
4. In Minute #5, I set out the specific questions for Mr Laing, the legal advisor engaged by Council and set out the timeframe for the filing of the legal advice and responses from the parties.
5. Having agreed to my seeking independent legal advice under Section 41C of the RMA at the hearing, the Applicant filed a memorandum challenging the validity of my being able to obtain a further legal opinion. I addressed that matter in Minute #6.
6. As recorded in Minute #7, the independent legal opinion was subsequently filed, the submitters, section 42A Report officer and the Applicant duly filed their responses in line with the timetable set out in Minute #5. All the material filed was distributed to the parties.

¹ Minute #4, dated 6 October 2025, Para 2

Position of the Applicant

7. The position of the Applicant was set out in the written submission of Mr Young dated 3 October 2025. This submission being the written version of the position put by Mr Young on behalf of the Applicant at the hearing on 2 October 2025. Mr Young set out the position in detail with references to case law. I have found it helpful to set out Mr Young's conclusion in full to the Applicant's position, namely;

6.1 *For the reasons set out above, the Applicant respectfully submits that the proposed boundary adjustment does not constitute "further subdivision" within the meaning of Lot 31's consent notice terms. The adjustment creates no new allotments, has no adverse environmental effects, and does not undermine the purpose of the original subdivision consent. Rather, positive effects arise from the application, including decreased risk of natural hazard impacts. In the alternative, should the consent notice be interpreted as prohibiting such an adjustment, the statutory framework under s 221 RMA provides a clear pathway for variation or cancellation — by agreement between the Applicant and NPDC or by the Applicant making an Application under s 221. The variation or cancellation is justified by both changed circumstances and the efficient use of resources. In either event, the change or cancellation should proceed on a non-notified basis, as there are no affected parties in terms of the RMA.²*

Legal Opinion

8. The specific questions I put to Mr Laing in relation to the submissions from Mr Young were:
- a) Do the boundary adjustments as sought by the applicant and shown on Scheme Plan W-211212-RC01 Sheet 2 (Appendix A to its resource consent application), involve a *subdivision of land* as defined by section 218(1) of the Resource Management Act 1991 (**RMA**) and therefore require a subdivision consent under section 11(1) of the RMA?
 - b) Does Consent Notice 7890638.35 as registered against the record of title for Lot 31 DP 385658 prevent a boundary adjustment application in respect of that lot from proceeding without the consent notice being first varied (or cancelled)?³
9. Mr Laing stepped through his reasoning⁴ for concluding in response to question a)
- "42. *In summary, I conclude that the boundary adjustment division of both Lots 20 and 31 into 2 allotments each, involves a subdivision of land under section 218(1)(a) and requires a subdivision consent.*"

And to question b),

² Submissions on behalf of the Washer Family Trust on procedural question regarding RMA s218 and Tapuae Country Estate Consent Notices, Mr A Young, dated 3 October 2025, Para 6.1

³ Minute #4, dated 6 October 2025, Para 3

⁴ Legal Advice, Duncan Laing, dated 14 October 2025

- “64. *Given all the factors outlined above, I do not consider that there is any proper basis for reading down the Consent Notice wording so that it does not extend to boundary adjustments that do not create additional allotments. I further consider that the Consent Notice prevents the proposed disposition of allotments to give effect to the boundary adjustments.*
65. *Accordingly, I am of the view the Consent Notice would need to be varied or cancelled before the subdivision consent application can proceed further.”*

Position of the submitters and the Section 42A reporting officer

10. The submitters supported and adopted the position as set out in Mr Laing’s legal advice, seeking that the application be declined and setting out what they saw as the correct procedure moving forward.⁵
11. Similarly, the section 42A Reporting officer accepted Mr Laing’s advice and set out what Mr Robinson noted as relevant process points.⁶

Applicant’s Response

12. In response to Mr Laing’s advice and, responses from the submitters and the section 42A reporting officer, the Applicant maintained their position that Lot 31’s consent notice does not prohibit the proposed minor boundary adjustment.⁷ Mr Young’s submission on behalf of the Applicant noted no further subdivision was occurring in relation to the intent of the consent notice and no additional lots were being created. Further that,
- “4. *Regarding the “further subdivision” issue, the Applicant respectfully refers the Commissioner to its earlier written submissions — filed on 3 October 2025 (“**first procedural submissions**”), particularly at:*
- a. [2.1] – [2.11] submitting: lot 31’s record of title does not restrict the boundary adjustment — in light of the consent notice’s interpretation;*
- and*
- b. [3.1]– [3.12] submitting: judicial interpretation of “subdivision” under the RMA confirms the consent notice does not prohibit the boundary adjustment.*
5. *The consent notice is intended to prevent additional lots being created at Tapuae, because additional lots allowing residential dwellings would generate effects. This is a natural and ordinary meaning of the consent notice — also reflecting a purposive interpretation. The consent notice was implemented in the context of a series of development stages and sought to avoid additional lots beyond that final stage, as indicated by the words ‘no further subdivision’. But the consent notice was not intended to restrict a boundary adjustment such as*

⁵ Response to procedural Issue – Further submissions by 8 Freehold Residents of Tapuae County Estate – dated 22 October 2025

⁶ Memorandum of the Section 42A Reporting Officer, Mr C Robinson, dated 22 October 2025

⁷ Applicant’s further submissions addressing consent notice condition, Mr A Young, dated 30 October 2025, Para 2

this, because it is not a 'further' subdivision which would create additional lots, and reading it in this way requires a technical reading."

6. *However, if the Commissioner agrees with Mr Laing, the Applicant submits:*
 - a. *The Commissioner has jurisdiction to vary the consent notice condition — of his own volition, as part of the current application.*
 - b. *Alternatively, the Applicant can apply to vary the consent notice conditions, as part of the current application.*
 - i. *Variation of the consent notice conditions should proceed on a non-notified basis as there are no "affected" people for the purposes of the RMA.*
 - ii. *In addition, the variation of the consent notice would be a consequence of the current consent application process, which was limited notified. All persons who might be considered potentially affected (although the Applicant says they are not) have already had the opportunity to be involved in considering the substance of the activity for which consent is sought. There is no utility in re-running the same arguments again. If the substantive application has acceptable effects, then the modification of the consent notice to allow the activity to occur must also necessarily also be acceptable.*
 - c. *Further, the substantive application should still be considered notwithstanding the consent notice condition. The substantive consent can be granted subject to a condition precedent requiring lot 31's consent notice conditions be varied before the substantive consent could be implemented.⁸*

(Footnotes omitted)

13. The submissions of Mr Young further expanded his reasoning as to paragraph 6 a – c and included an attached Assessment of Environmental Effects (AEE) for a variation to a condition of the consent notice. I return to those matters later.

Decisions

14. In terms of the matters before me, I have been assisted in reaching my procedural decisions by Counsel for the Applicant, the submitters, the section 42A Reporting officer, and the independent legal advisor. In addition, I have carefully considered all of the matters raised by the parties in the information provided.
15. Firstly, I consider that I need to address the question as to the application before me, does the boundary adjustments as sought by the Applicant and shown on Scheme Plan W-211212-RC01 Sheet 2 (Appendix A to its resource consent application), involve a subdivision of land as defined by section 218(1) of the Resource Management Act 1991 (RMA,) and therefore require a subdivision consent under section 11(1) of the RMA?

⁸ Applicant's further submissions addressing consent notice condition, Mr A Young, dated 30 October 2025, Paras 4 -6

16. I have considered the arguments for and against of Mr Young for the Applicant and Mr Laing's independent legal advice. On balance, I find application for a boundary adjustment is the subdivision of land under section 218(1) of the RMA and hence requires a subdivision consent under section 11(1) of the RMA.
17. I accept the opinion of Mr Laing, that the application falls within the plain meaning of the subdivision of land under section 218(1)(a) of the RMA and that the exceptions advanced by in the Applicant in terms of the caselaw do not apply.⁹ In particular, I find that the facts and circumstances of the application before me, are different to that addressed in the Spark New Zealand Trading case¹⁰; the latter being a declaration application of different facts rather than a substantive subdivision of land consent application.
18. The second question to be answered is, does the consent notice No 7890638 (the consent notice), registered against the records of title for Lots 31 and 32 DP 385658, prevent the application proceeding without the consent notice being first varied or cancelled?
19. Again, I have summarised the positions and reasoning advanced by the Applicant and the answers to my question on this matter from the independent legal advisor above.
20. In this case, I find that the consent notice does prevent the boundary adjustment and proposed disposition of allotments and as such, the consent notice is required to be varied or cancelled before the application can proceed further. I accept the opinion of Mr Laing as to the ordinary meaning of the wording of the consent notice and reasons set out in his legal opinion.¹¹ I am not persuaded by the reading down of the consent notice as advanced by the Applicant.
21. In summary, I find the substantive application for the boundary adjustment being subdivision of land is subdivision consent under the RMA and that an application is required to vary or cancel the consent notice before the application can proceed.

Next Steps

22. As signalled above, the Applicant set out that should I agree with Mr Laing's opinion, that the commissioner can vary the consent notice condition at the current stage of proceeding, that the Applicant can apply to have the condition varied at the current stage of proceeding and various alternatives including considering the subdivision application and section 221 of the RMA application together, or granting the substantive application and including a condition precedent.¹² I record that the Applicant's response of 30 October 2025, included an attached AEE in relation to the condition variation.
23. To be clear, I did not seek this component of the submissions from the Applicant.

⁹ Legal Advice, Duncan Laing, Dated 14 October 2025, Paras 6 - 42

¹⁰ *Spark New Zealand Trading Ltd v Clearspan Property Assets Ltd* [2018] 3 NZLR 661 (CA)

¹¹ Legal Advice, Duncan Laing, Dated 14 October 2025, Paras 43-65

¹² Applicant's further submissions addressing consent notice condition, Mr A Young, dated 30 October 2025, Paras 9 - 33

24. Nonetheless, I have carefully considered whether I have any jurisdiction to take further steps in relation to the variation of the consent notice and in doing so I have reviewed the delegations under section 34A of the RMA from the Council to myself in terms of the present hearing.
25. I have formed the view that I do not have jurisdiction to vary the consent notice conditions as part of the current application for subdivision consent. While I accept that in some circumstances an amendment or modification to a resource consent application may fall within the scope of such an application, the present situation is quite different from a procedural point of view. Further, given the express terms of the consent notice I do not consider that I have jurisdiction to grant the subdivision consent for a boundary adjustment subject to a condition precedent or advice note.
26. Section 221 of the RMA is a separate and discrete part of the Act, and contains a specific statutory process for the varying or cancellation of a consent notice. It requires assessment as to the application's acceptance for processing under section 88, a decision as to notification under section 95 and assessment in terms of a section 42A report, before the matters under section 104 could be considered.
27. In addition, I find that it is not within the scope of my delegations to deal with a section 221 application under the RMA. My delegations would need to be amended if I was to have jurisdiction to consider any section 221 application in the future.
28. Having found that I do not have delegation to consider the application for variation of the consent notice, the current application for a subdivision consent cannot advance for the time being.
29. It is a matter for the Applicant as to how they wish to proceed. Any next steps would be appropriately advanced through liaison with Council officers.
30. Any correspondence to the Commissioner should be directed through Claire Kelly, Governance Advisor at NPDC (claire.kelly@npdc.govt.nz).



Mark St.Clair
Independent Commissioner - Chair
Date: 18 November 2025