

**Before New Plymouth District Council  
Independent Commissioner Mark St. Clair**

In the matter of an application for resource consents LUC24/48662 and  
SUB24/50201, and variation SUB24/50201.01 — 1 and 9 Washer Road, Omata

**Washer Family Trust Limited**  
Applicant

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Applicant's reply submissions

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7 July 2026

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## Applicant's reply submissions

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### Introduction

1. The Washer Family Trust Limited and Tapuae Country Estate Limited have applied for resource consents LUC24/48662 and SUB24/50201 and to vary consent notices 7890638.35 (in relation to Lot 31 DP 385658) and 7890638.24 (in relation to Lot 20 DP 385658) under s 221(3) of the Resource Management Act 1991.
2. If granted, the applications would allow a minor boundary adjustment between Lot 20 DP 385658 and Lot 31 DP 385658, and the relocation of Lot 20's building platform.
3. These reply submissions follow two NPDC hearings before Independent Commissioner Mark St. Clair. They address:<sup>1</sup>
  - (a) The order in which the consent notice variation and substantive applications should be determined.
  - (b) NPDC's reporting officer's amenity analysis.
  - (c) Opposing positions concerning "futility" and property rights.
  - (d) The agreed conditions if the applications are granted: commending them.

### Procedure

4. At the hearing, Commissioner St. Clair asked how the three applications should be determined: together, sequentially, or by separate decisions.
5. Where an initial application reveals the need for an additional consent, the additional consent application may "catch up" with the first application. Both applications can then be determined together. The Commissioner adopted this approach in his consent decision *SUB21/47781* and *LUC22/48312*.<sup>2</sup>

<sup>1</sup> The applicant also relies on its previously filed written submissions.

<sup>2</sup> Decision of Independent Commissioner Mark St. Clair, 28 June 2023: resource consent application by B, M and R Sim for a six (6) lot subdivision and land use at 6 and 42 Leith Road, Okato, New Plymouth (SUB21/47781 and LUC22/48312).

6. At the variation hearing, the Commissioner referred to his previous decision addressing the sequencing of a subdivision application and an application to cancel consent notice conditions under s 221.<sup>3</sup>
7. In that decision, the Commissioner determined the applications sequentially within the same report. The subdivision application was addressed first, because its outcome determined whether cancellation of the consent notice condition was required.<sup>4</sup>
8. Although the Applicant seeks variation rather than cancellation of consent notice conditions, the same procedural approach is appropriate. There would be no principled reason to adopt a different procedure here.

### Issues

9. These reply submissions respond to submissions made at the hearings on 2 October 2025 and 16 June 2026. The issue is whether the consent notice variation, resource consent and subdivision consent would create adverse amenity effects that justify declining the applications.

### Agreed points

10. Following the hearings, the experts agree:
  - (a) There are no effects on waterbodies and the coastal environment including coastal values and coastal related hazards.
  - (b) There are no traffic effect or access concerns.<sup>5</sup> Additional statutory and policy controls also curtail access to the balance lot.<sup>6</sup>

<sup>3</sup> Wellington City Council, Lloyd Family Trust for a five (5) lot subdivision and cancellation of a consent notice at 330 Horokiwi Road, Horokiwi, Wellington (Service Request Number (SR) 490041) – April 2025.

<sup>4</sup> At [11].

<sup>5</sup> Campbell Robinson, *Hearings report under s 42A of the RMA for subdivision and land use consent applications Section 42A*, 10 September 2025 (**first s 42A report**) at [42]. Campbell Robinson, *Hearings report under s 42A of the RMA* 22 May 2026 (**second s 42A report**) at [42]. Expert Planning Statement of Christopher Rendall, 17 September 2025 ("**CR**") at [20] and [72]. Expert Planning Statement of Christopher Rendall 29 May 2026 ("**CR2**") at [20].

<sup>6</sup> For the health and wellbeing of all lot owners, the farm's operator restricts access to the farm, in line with their obligations under the Health and Safety at Work Act 2015 (Statement of John Washer, Farmer, 17 September 2025 ("**JW**") at [9], A-390, 391, Cl., 36.); the terms of its sublease (JW, A-390, 391, Cl., 36.); and its own internal health and safety and risk management policies (JW, A 393-395).

- (c) The proposed building platform will create a stable and flood free building platform.<sup>7</sup>
  - (d) Private property rights cannot be considered at a resource consent hearing.<sup>8</sup>
  - (e) The application will maintain Tapuae's rural character.<sup>9</sup> The proposal maintains key rural character attributes, such as: the Estate's openness, sense of spaciousness and low density (outlook and privacy); site vegetation; the production-oriented nature of the land; and rural based industry or infrastructure.<sup>10</sup>
  - (f) There are no reasons under NPS-NH 2025 for the applications to be refused.<sup>11</sup>
11. Effects, if any, will be less than minor.
  12. This expert consensus is an orthodox basis to conclude the proposal will not have adverse amenity effects. Thus the applications should be granted.

### **Contended amenity effects analysis reflects property right concerns**

13. Mr Robinson's adverse amenity effect conclusion is not based on any objective environmental effects generated by the proposal.
14. Those objective effects might be outlook, privacy, traffic/access, noise, smell, light, rural character, coastal effects, waterbody effects, cultural effects, or natural-hazard effects. The section 42A reports actually confirms the absence of these effects.<sup>12</sup>
15. Mr Robinson's reasoning turns on the submitters' asserted property right concerns. He describes the adverse effect as impacting the submitters'

<sup>7</sup> Second s 42a report: "Overall, the substantive application successfully demonstrated that a stable and flood-free building platform can be created within proposed Lot 1." Expert Geotechnical Statement of Kristel Franklin, 26 May 2026 ("KF2") at [25] and [33].

<sup>8</sup> *Lysaght v Whakatāne District Council* [2022] NZCA 423 at [47] and [49]. First s 42A report at [44]-[51]. Second s 42A report at [43]-[47].

<sup>9</sup> JW at [21]-[22]. CR at [45]-[53].

<sup>10</sup> First s 42A report at [51]-[53]. Second s42A report at [43]-[47].

<sup>11</sup> KF2 at [11]-[23]. Second s 42A report at [69].

<sup>12</sup> First section 42a report at [60]: "the submissions don't reference effects which could be considered environmental".

*"ability to use the land which they have legal rights over for its common and agreed purpose".<sup>13</sup>*

16. This framing identifies the effect in relation to legal rights over land and the submitters' claimed agreed use of that land. It is not an assessment that analyses amenity concerns that come from objectively assessed environmental effects.
17. The reasoning is further reflected in his responses to questions at the hearing. Mr Robinson accepted:

*"maybe agreed isn't the right word ... the point I think I was trying to make there, was ... the submitters ... had put a view forward whereby land which they considered they get high appreciation and amenity from was being exchanged..."*

18. Again his reasoning is premised on the continuation of claimed legal rights over land. This is a property law consideration. While it might be sincerely held, concerns about property rights are not amenity effects under the RMA.

### **Rural character and amenity must go hand in hand**

19. Mr Robinson's amenity analysis draws a false distinction between rural character and amenity. He appears to suggest that they can be analysed separately.
20. In practice, a change in neighbourhood character is a common indicator of an amenity effect.<sup>14</sup> The notion that rural character might not be effected, but amenity would be, is curious one. The Commissioner questioned Mr Robinson on this, and he said in answer:
- "I've made some conclusions [as to rural character] on sort of what I'd describe as more broad rural character"*
21. Mr Robinson is effectively saying that while "broadly" there is no adverse effect on rural character, amenity can be assessed in isolation and narrowly

<sup>13</sup> First s 42A report at [62], see similarly at [48].

<sup>14</sup> *Shell Oil NZ Ltd v Auckland City Council* [1994] ELHNZ 17 (PT): "This environment is essentially residential/commercial in its character with a strong emphasis on the maintenance of pedestrian amenity. ... a service station use on this particular site will not maintain nor enhance those amenity values".

as the subjective feeling or experiences of the submitters. This approach is wrong in law.<sup>15</sup>

22. Even if this approach did have a legal basis, it lacks any factual basis here. Most of the submitters live too far away from Lot 20 to be affected. The closest opposer lives 400m away.<sup>16</sup> The experts, including Mr Robinson all agreed the distance between the opposing submitters' properties and Lot 20 sufficiently reduces "rural amenity effects to a less than minor level".<sup>17</sup>

### Reporting planner's "objectives and policies analysis"

23. Mr Robinson's objectives and policies analysis repeats the same error. He concludes the proposal is inconsistent with SUB-P15, RPROZ-O4, RPROZ-P3 and RPROZ-P5 because submitters' property-rights concerns are treated as relevant RMA amenity effects.
24. The orthodox approach is to ask whether effects generated by the proposal are inconsistent with the District Plan's objectives and policies. It is not to ask how submitters will subjectively experience or feel about the proposed boundary change.

### The orthodox approach

25. Read in context, the relevant objectives and policies focus on the environmental attributes that contribute to rural character and amenity in the Rural Production Zone.
26. These attributes require considering:
- (a) Things like the zone's spaciousness, (low) density, the distance between buildings and (associated outlook and privacy benefits), and the nature of site vegetation.
  - (b) The effects of the proposal in terms of maintaining the land's production-oriented nature and rural base industry or infrastructure.

<sup>15</sup> *SKP v Auckland Council* [2018] NZEnvC at [205] agreeing with the environment court in *Schofield v Auckland Council* [2012] NZEnvC 68 at [51]. *BP Oil NZ Ltd v Manukau City Council* [1998] ELHNZ 457 (EnvC) for example at 8 and 9 *Guardians of North Taieri Inc v Dunedin City Council* (2004) 10 ELRNZ 286 at [111]. *Shell Oil NZ Ltd v Auckland City Council* [1994] ELHNZ 17 (PT).

<sup>16</sup> CR at [17(i)(i)] and [45]. First s 42A report at [53].

<sup>17</sup> First section 42A report at [53].

- (c) Whether the proposal causes adverse traffic, light or noise effects that are not of a type, scale or nature appropriate for the rural production zone.
27. The agreed and accepted expert evidence is that the proposal maintains all of those attributes.
28. The Supreme Court in *Royal Forest and Bird Protection Society of New Zealand Incorporated v New Zealand Transport Agency* recently reiterated the correct approach to assessing objectives and policies. “A fair appraisal of the objectives and policies read as a whole” is required.<sup>18</sup> Decision makers must avoid “isolating and de-contextualising individual provisions in a manner that does not fairly reflect the broad intent of the drafters”.<sup>19</sup>

#### **Mr Robinson’s approach**

29. Mr Robinson does exactly that. He isolates the word “amenity” from its context. When the word appears in an objective or policy he uses that word to introduce his own amenity effects analysis, and regardless of the objective and policy when read as a whole. The presence of the word “amenity” in an objective or policy does not give rise to a veto right based on Mr Robinson’s own amenity effects analysis.
30. The officer’s analysis of RPROZ-P5 illustrates what he does in clear and inexplicable terms.
31. The policy provides:
- Require the effects generated by activities to be of a type, scale and level that is appropriate in the Rural Production Zone and that will maintain rural character and amenity, including by:*
- 1. managing noise and light emissions to an acceptable level, particularly around sensitive activities; and*
  - 2. managing high traffic generation activities that compromise the safe and efficient use of the transport network.*

<sup>18</sup> *Royal Forest and Bird Protection Society of New Zealand Incorporated v New Zealand Transport Agency* [2024] NZSC 26 at [79] / p 281, referring to *Dye v Auckland Regional Council* [2002] 1 NZLR 337 (CA) at [25] per Gault, Keith and Tipping JJ.

<sup>19</sup> *Royal Forest and Bird Protection Society Incorporated v New Zealand Transport Agency*, above n 18, at [79].

32. Mr Robinson concludes in his second s42A report that:<sup>20</sup>
- “the proposal to facilitate the boundary adjustment subdivision is inconsistent with the direction of Policy RPROZ-P5. This is due to effects on amenity values being significant and inappropriate in terms of with the type, scale and level for the Rural Production Zone. The effects cannot be mitigated.”*
33. At the variation hearing, Mr Robinson effectively confirmed the only issue with RPROZ-P5 was “amenity” as standalone concept. The Commissioner asked him to explain how the alleged amenity effect was inappropriate in type, scale and level for the Rural Production Zone. He answered:
- “I think that probably more is type scale and level, I think really is related to the permanent nature of the effects and earlier commentary that based on what’s in front of me that level of effect couldn’t easily be, or readily be mitigated.”*
34. This answer is difficult because it does not explain why the proposal’s effects are inconsistent in type, scale or level with the rural production zone.
35. While the Policy words “including by” do mean RPROZ-P5’s list of examples (noise, light or traffic effects) is not exhaustive, the examples show the policy focuses on objectively identifiable environmental effects generated by a proposed activity.
36. The experts agree the proposal raises no noise, light or traffic effect issues. If a broad subjective property right amenity effect is engaged by RPROZ-P5, there is no explanation of (or evidence for) why that amenity effect is inconsistent with type, scale or level of effects appropriate in the rural production zone.

### **The exercise here**

37. Having regard to the District Plan does not mean “*objectives and policies can simply be put in a blender*” so that stronger policies are weakened and weaker policies strengthened.<sup>21</sup> The objectives and policies need to be considered on their own terms but also as they relate to one another in the

<sup>20</sup> Second section 42A report at [85].

<sup>21</sup> *Royal Forest and Bird Protection Society Incorporated v New Zealand Transport Agency*, above n 18, at [80].

overall plan.<sup>22</sup> Even if the objectives and policies conflict — fact and context determines how any tension is resolved.<sup>23</sup>

38. But this application is easier. There is no tension that needs to be resolved. Here, the relevant facts and context concern objectively assessable environmental effects in the Rural Production Zone. Evidence of such effects is entirely absent.
39. So the better conclusion is that the proposal does not conflict with the District Plan's objectives and policies.<sup>24</sup>

### Reply to opposing submitters

40. The opposing submissions were broadly premised on property-right concerns. These are irrelevant to the consent process, even though submitters describe them as amenity effects.
41. Mr Buckley put the point directly when he said: *"our concern is not the siting of the house or the aesthetic preference, it is the permanent transfer of part of the land thirty people co-own into one private lot."*

### Property-right considerations do not make the applications futile

42. Mr Buckley submitted that, even if the applications were granted, they could never be implemented for property-law reasons. He said this "futility" should prevent the applications being granted.
43. Mr Buckley's submission is inconsistent with the ordinary operation of the RMA. The Court of Appeal says:<sup>25</sup>

"The RMA enables a resource consent application to be made in respect of any land. **The applicant does not have to own the land, or occupy it actually or prospectively** (although implementation of a consent will obviously require permission from the landowner if that person is not the consent holder)."

So, obtaining resource consents before obtaining property rights is a normal part of the RMA process.<sup>26</sup>

<sup>22</sup> At [80].

<sup>23</sup> At [80].

<sup>24</sup> CR2 [65]-[69].

<sup>25</sup> *Lysaght v Whakatane District Council* [2022] NZCA 423 at [50].

<sup>26</sup> RMA imposed obligations can qualify or override property rights granted under other statutes. It is *"inconceivable that the Land Transfer Act was intended to compete with the Resource Management Act in relation to the management of resources"*: *Wheeler Forrest Associates Ltd v Farquhar* [2001] 2 NZLR 417 (HC) at [16]-[17].

### In any event, the proposal maintains the estate's amenity

44. At both hearings, opposers claimed to gain amenity from the small part of the balance lot paddock that is proposed to become part of Lot 20.

45. For example, Mr Froude stated:

*"I walk past these areas. I enjoy walking across the farm. And it will clearly change my enjoyment of the place ... we will have another property on a boundary of the walkway that was not designed to be there. The design of that property was designed to be set back from the [access] road and it will clearly impact our amenity by being on the roadside."*

46. Mr Cameron said:

*"My submission is about amenities. And the loss of them. You know they include our visual appreciation of the space. That's an amenity around each section, and especially the view to Maunga Taranaki driving through the estate would change significantly with the position of a third house in one of the best viewshafts of the estate. Steve Heinemann's house sits possibly in one of the most pristine viewshafts. And all of a sudden we would have three. We are being asked to give up pristine farmland and to take in its place inaccessible, inaccessible, slip prone land."*

And:

*"I just think it's our amenity, our visual amenity to enjoy that view without three [houses], it's almost a housing estate up there, by the time they finish putting three, which is not really what Tapuae is about..."*

Relatedly, Mr Froude said:

*"We certainly feel like there will be a change to that look with that house brought forward and it will look somewhat like a housing estate up there".*

47. The evidence is all assertion and generalities. There is a reason the submitters did not provide expert evidence on this point.

48. It is impossible for them to demonstrate how the exchange of 1506m<sup>2</sup> of paddock with 1507m<sup>2</sup> of paddock and native bush in context of a 56.05-hectare balance lot<sup>27</sup> would or could generate adverse amenity effects that should require the applications' declinature.

<sup>27</sup> (While the majority of the unstable gully head will remain inside lot 20's boundary).

### Tapuae's planning premise was 30 houses on 30 lots

49. Statements the proposal will make Lot 20, and its surrounds resemble a "housing estate" sit entirely at odds with the planning history of Tapuae. The developer always intended construction of 30 houses on 30 lots.<sup>28</sup> Tapuae was planned and consented on this basis — long before any opposing submitter had purchased their own lots. When submitters purchased they did so on the basis of a subdivision with 30 developed lots.
50. The proposed house will be set back 5.0m from the property boundary at the access road point. The access road itself was designed and consented to support a house on Lot 20.<sup>29</sup> The subdivision's original intention was to create lots with small setbacks to maximize the shared area that exists between the lots. In applying a 5.0m setback the proposal works to maximize the use of the Highly Productive Land.<sup>30</sup>

### The physical effects remain less than minor

51. Moving the building platform closer to Lot 19 (located uphill of Lot 20) actually reduces Lot 20's visual impact on adjacent Lot 19.<sup>31</sup> A tree shelterbelt currently screens Lot 20 — this will be continued along the new boundary.<sup>32</sup> There are also no viewshaft overlays in existence to be concerned about.<sup>33</sup>

### The remaining lay concerns do not alter the planning assessment

52. The balance of the opponent's concerns do not provide a basis to decline the applications.
- (a) At the first hearing, Mr Seed stated this matter "could have been settled quite easily – everyone could have gone round the table, said their piece, could have come to an agreement where a little Koha could have been given". Mrs Seed had unparticularised concerns

<sup>28</sup> CR at [24], page 23.

<sup>29</sup> CR at [42]-[44].

<sup>30</sup> Application for subdivision and landuse consent filed on behalf of the Washer Family Trust Limited 14 November 2024 at page 13 (**first application**).

<sup>31</sup> Application to vary consent notice conditions filed on behalf of the Washer Family Trust Limited 19 December 2025. Lot 19's owners consent to the applications.

<sup>32</sup> First application at page 13. Chris Rendall and Campbell Robinson, Joint Witness Statement, 7 November 2025, DECISION 2: LAND USE LUC24/48662 at [6]-[7] and Diagram 1: "Shelterbelt requirements".

<sup>33</sup> As above fn, 31 and 32.

about liability arising from the proposals. Neither of their comments are relevant.

- (b) Mr Buckley shared submitters' concern that the proposed building platform was not "safe". Yet he accepted that the submitters were not engineers, and he was singularly unable to identify the standard against which safety should be assessed.

This was not an area ignored by the Applicant's evidence.

Geotechnical stability was at the applications core, and great care was taken the experts in this area. NPDC's development engineer is satisfied by this material.<sup>34</sup>

- 53. The Applicant does not criticise the opposing submitters for their views. There will always be different personal responses to the prospect of change.
- 54. But RMA decision making is not controlled by the most sensitive person's response.<sup>35</sup> The RMA is not a "no effects" statute.<sup>36</sup> Tapuae does not have to be a "no effects" zone and the proposal's effects (if any) will be less than minor.
- 55. Even if submitters' property right concerns were approached as amenity concerns, they would not justify declining the applications.

### Conditions sought

- 56. The draft terms of the consent notice variations have been agreed by Mr Rendall and Mr Robinson. They are contained in the planning expert joint witness statement, dated 17 June 2026. Opposing submitters do not take issue with the agreed conditions. The Applicant commends the agreed conditions to the Commissioner.

<sup>34</sup> First s 42A report at [53], CR at [45].

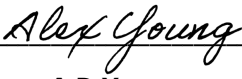
<sup>35</sup> *Norsho Bulc Limited v Auckland Council* [2017] NZEnvC 109 at [62].

<sup>36</sup> *Royal Forest and Bird Protection Society of New Zealand Inc v Buller District Council (No 2)* — [2013] NZRMA 293 (HC) at [52], citing RMA, ss 17(4), 319(2) and (3). *Creswick Valley Residents' Association Incorporated v Wellington City Council* [2015] ELHNZ 204 at [2-32].

## Conclusion

57. The Applicant submits:
- (a) The subdivision consent and land use consent applications should be granted. Any effects will be less than minor.
  - (b) The proposed consent notice variations should be granted. The variations are narrow, preserve the consent notice's original resource management purposes, respond to a material change in physical circumstances, and enable Lot 20 to be used safely for its originally intended residential purpose.
58. Mr Robinson's improper approach to "amenity" and the submitters' related concerns do not justify declining the application. The objections do not raise RMA issues. Subjective private property right concerns need not trouble the Commissioner

Dated 7 July 2026

  
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Counsel for the Applicants