

BEFORE AN INDEPENDENT HEARING PANEL

IN THE MATTER

of the Resource Management Act 1991 (the Act)

AND

IN THE MATTER

of a Resource Consent Application for
Subdivision at 597 Horahora Road,
Arapuni

K & L Tylee

Applicants

South Waikato District Council

Consent Authority

Submissions of Counsel on behalf of The Bates Family Trust

Dated 19 October 2026.

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May it Please the Panel

Introduction

1. These submissions are presented on behalf of the Bates Family Trust in support of the evidence of Stephen Bates and landscape architect Shannon Bray.
2. The Trust's position is straightforward. The Trust does not oppose rural lifestyle development within the Rural Lifestyle Zone as a matter of principle. Nor does it contend that ONL status sterilises development opportunities.
3. Rather, the Trust submits that the issue before the Panel is whether the particular subdivision pattern proposed by the Applicants constitutes an appropriate form of development within ONL10 having regard to:
 - section 6(b) of the Resource Management Act 1991;
 - the objectives and policies of the District Plan;
 - the identified values and characteristics of ONL10; and
 - the specific policy direction requiring clustered and landscape-responsive development.
4. Mr Bray's evidence demonstrates that the proposal fails to achieve those outcomes.
5. The Trust submits that the proposed layout remains fundamentally inconsistent with the landscape and subdivision outcomes sought by the Plan and therefore represents inappropriate subdivision and development within an Outstanding Natural Landscape.

Legal Framework

6. Outstanding Natural Landscapes are a matter of national importance. Section 6(b) RMA requires the protection of outstanding natural features and landscapes from inappropriate subdivision, use and development. Importantly, the statutory direction is not simply concerned with reducing adverse effects. It requires protection from inappropriate subdivision and development.
7. As the Supreme Court held in *Environmental Defence Society Inc v New Zealand King Salmon Co Ltd*, "inappropriateness" is to be assessed against the values sought to be protected. In the context of s 6(b), the relevant inquiry is therefore whether the proposal protects the

characteristics and values that justify recognition of the landscape as outstanding.¹

8. That principle was subsequently addressed by the Court of Appeal in *Man O'War Station Ltd v Auckland Council*.² The Court rejected the proposition that the identification of an ONL should be influenced by the planning consequences that might follow from that designation. As the Court observed, whether a landscape is outstanding is determined by its inherent qualities. The planning consequences arise afterwards.
9. The Court of Appeal stated that the questions of what restrictions apply to land identified as an ONL and what activities may subsequently be appropriate are separate issues. The fact a landscape has development potential does not mean it should not be recognised and protected as an ONL. The case note summarising the Court's reasoning records that ONL identification is based upon the inherent quality of the landscape itself and that planning consequences arise only after that assessment is undertaken.³
10. That principle is directly applicable here. ONL10 was identified because of its landscape values and characteristics;⁴ ie
 - a) The sequence, form and legibility of the river terraces and escarpments;
 - b) The gullies, wetlands and drainage patterns associated with the terrace and river system;
 - c) The indigenous riparian, wetland and gully vegetation and associated habitat;
 - d) The predominantly open character of the terrace landscape;
 - e) The wider Waikato River corridor; and
 - f) The spatial and experiential relationship between Horahora Road, the terrace landforms and the Waikato River.
11. The significance of those values cannot be diminished because the land is also located within the Rural Lifestyle Zone. Rather, the planning question becomes how development should occur within that landscape while maintaining protection of those identified values.
12. The Trust submits that much of the Applicants' proposal, and aspects of the section 42A analysis, begin from the proposition that the Rural

¹ *Environmental Defence Society Inc v The New Zealand King Salmon Co Ltd* [214] NZSC 38 at [101] – [105].

² *Man O'War Station Ltd v Auckland Council* [2017] NZCA 24.

³ *Man O'War* [44]-[46].

⁴ S Bray evidence [42].

Lifestyle Zone anticipates residential development and then asks whether the resulting adverse effects can be mitigated.

13. That approach reverses the inquiry required by section 6(b). The correct starting point is the recognised status of ONL10. The question is not whether the landscape can accommodate the number of lots proposed, nor is it whether adverse effects can be reduced through planting, landscaping or consent conditions.
14. The principal question is whether the proposed subdivision pattern protects the landscape qualities that justified ONL identification in the first place. The issue is whether this particular layout appropriately recognises and protects the existing landscape values.

District Plan Framework

15. The District Plan does not simply anticipate rural lifestyle development. Its policies also provide direction as to how such development is to occur and RLZ-P5 is particularly relevant.
16. Policy RLZ-P5 promotes:
 - a) Subdivision design that is responsive to its landscape;
 - b) clustering of development;
 - c) avoidance of lineal subdivision patterns;
 - d) separation from Waikato River; and
 - e) protection of the character and values of the Waikato River landscape.
17. Policy NFL-P4 reads:

Subdivision, use, and development should **avoid**, remedy or mitigate adverse effects on the values that contribute to an area being an outstanding natural feature or landscape, in particular by **avoiding**, remedying or mitigating the adverse effects of activities such as indigenous vegetation clearance, wetland drainage, large-scale landform modification, and construction of large or otherwise visually prominent structures, buildings and earthworks that will adversely affect those values identified. (emphasis added).
18. Those requirements are not ancillary considerations. They represent the mechanism through which the Plan seeks to reconcile development opportunities with ONL protection.
19. In particular, NFL-P4 is an 'avoidance' policy in the *King Salmon* sense.⁵ As applied to a resource consent application by the Court of Appeal in *RJ Davidson*, that means:

If an affected area was "outstanding", such adverse effects were required to be avoided. In less sensitive areas, the requirements was to avoid

⁵ *Environmental Defence Society Inc v New Zealand King Salmon Co Ltd* [2014] NZSC 38, [145]-[146].

“*significant* adverse effects”. “Avoid” was to be interpreted as meaning “not allow” or “prevent the occurrence of”.⁶

20. This application was designed and notified for a large-scale landform modification within an outstanding landscape and allows for large and visually prominent structures and earthworks. The notified application proposed to recontour practically the entire site and then to maximise the number of lots, to the extent it was a non-complying development.
21. The scale of earthworks has now been reduced but the layout is essentially the same, minus the lots which are no longer accessible. In our submission the application did not and does not avoid adverse effects on the landscape values.
22. A subdivision pattern that remains predominantly linear and dispersed cannot be characterised as achieving policies directed toward clustering and landscape-responsive development.
23. The Trust further submits that Mr Bray’s evidence demonstrates that the proposed form of development is not consistent with the policy framework that was designed specifically for this landscape.
24. A recurring theme throughout the Applicants’ evidence is reliance upon future mitigation. We submit that the flawed layout design cannot be remedied by mitigation planting. That is just going to hide (at best) a fundamental change to this outstanding landscape.
25. The Trust accepts that landscape planting, restoration initiatives and design controls may reduce visibility and assist in managing effects however, the Plan does not envisage development first and mitigation later. Rather it envisages development being designed from the outset in a manner that protects identified landscape values. That distinction is critical.
26. Mitigation may reduce effects but it cannot transform an inherently inappropriate subdivision pattern into an appropriate one. Mitigation should follow the design process where the design responds to the ONL values. It is not an alternative to avoid the outcome sought by s 6(b) and policy RLZ-P5.
27. It is also noteworthy that South Waikato District Council endorsed a different approach to rezoning for rural lifestyle development at Lake Whakamaru. Also within a wider ONL (ONL-5) the Private Plan Change⁷ was developed specifically to respond to the site’s environment. As described by the planner for PPC5, the application introduced a structure plan (eventually renamed a Development Area Plan “DAP”) into the District Plan.

⁶ *RJ Davidson Family Trust v Marlborough District Council* [2018] NZCA 316, [57].

⁷ Private Plan Change 5.

28. The DAP directs future development and provides certainty of outcomes, including requiring a Landscape Delivery and Maintenance Plan and a Bat Management Plan, to be prepared and provided at subdivision stage in order to “*minimise adverse effects of future development on the surrounding character, landscape and the habitat of the endangered long tail bat.*”⁸
29. PPC5 introduced provisions into the District Plan to give effect to the DAP including:
- a) assessment criteria for subdivision and land use consent applications;
 - b) Removal of averaging requirements to enable a more responsive development within the ONL;
 - c) Delivery of significant public access infrastructure to the adjoining camping ground and lakeside reserve;
 - d) Legal tenure for the existing cycle trail that is located beside and within the property;
 - e) Impose a 6m height limit for buildings; and
 - f) Impose specific building material, colour and reflectivity rules, as specific examples.
30. While the circumstances of that development area differ from those of the present application, the planning framework ultimately adopted included a range of measures directed at achieving appropriate landscape outcomes. Those measures assist with the interpretation and application of District Plan policies relevant to rural lifestyle developments within outstanding landscapes.
31. Those measures are equally relevant to the consideration of this application and to whether the resulting development will effectively address the ONL context.

Public Access and the Waikato River Trail

32. The Trust acknowledges that the Applicants’ revised proposal includes provision for an esplanade strip adjoining the Waikato River however, the existence of an esplanade strip does not, of itself, achieve meaningful public access to or along the river.
33. Section 6(d) of the Resource Management Act identifies the maintenance and enhancement of public access to and along rivers as a matter of national importance. The statutory direction is not simply to avoid preventing access. It is to maintain and enhance public access opportunities.
34. In the present case, the evidence demonstrates that the site occupies a prominent position within the Waikato River corridor and within ONL10.

⁸ Louise Feathers planning evidence [2.3].

The application therefore presents an unusual opportunity to improve public access outcomes in a manner consistent with both s 6(d) and the broader objectives of the district planning framework.

35. The Trust submits that the proposed esplanade strip does not adequately achieve that outcome. There is no assurance that the strip will provide a practical, attractive or continuous public route along the river corridor. Nor does it secure integration with the existing Waikato River Trails network.
36. By contrast, relocation of the Waikato River Trail onto land adjoining the river would provide a permanent public benefit directly associated with the development being sought. It would enhance public access to and appreciation of the Waikato River, strengthen public connection with the Outstanding Natural Landscape, and better recognise the significance of the river corridor as a recreational, cultural and landscape resource.
37. The proposal seeks substantial private development opportunities within a nationally significant river landscape. In those circumstances, it is appropriate that the development delivers a corresponding public benefit. Securing the Waikato River Trail closer to the river margin represents a tangible and enduring means of achieving that outcome.
38. The Trust therefore submits that the Panel should give significant weight to the public access considerations identified in s 6(d) and should require provision for relocation of the Waikato River Trail onto the river frontage as part of any consent granted.

Conditions

39. Both the section 42A Report and the Applicants' planning evidence contains draft conditions proposed to apply to a consented development. Both reference a reverse sensitivity consent notice.
40. It is not clear to which lots such a reverse sensitivity consent notice should apply.
41. The Trust considers that such a condition should apply to all lots in the event that a suitable development is eventually consented. The introduction of new lifestyle lots into a working rural environment would benefit from having a tangible reminder to new families that different effects can be expected within the rural zone.
42. The text of the condition regarding reverse sensitivity is appropriate as written in both Ms Lonnberg-Shaw's report and in Mr Moule's evidence.⁹

⁹ Section 42A report at condition 138 and Evidence of D Moule, draft condition 223.

Conclusion

43. The authorities establish that the relevant inquiry is not whether development can occur within ONL10. The inquiry is whether the proposal protects the values for which ONL10 was identified. Those values are identified in Mr Bray's evidence. The Trust submits that the predominantly linear subdivision pattern, lack of genuine clustering and fragmentation of the terrace landscape undermine those values and therefore constitute inappropriate development within ONL10.
44. Mr Bray's evidence demonstrates that the proposal:
- remains predominantly linear in form;
 - fails to achieve meaningful clustering;
 - fragments the landscape;
 - relies heavily on mitigation to address shortcomings in layout; and
 - would materially alter the characteristics that contribute to the recognised values of ONL10.
45. Properly analysed, the proposal does not represent the type of landscape-responsive development contemplated by RLZ-P5. Adverse effects are not avoided as required by NFL-P4 nor does the application sufficiently protect the values for which ONL10 was identified.
46. The Trust therefore submits that the application is inconsistent with the objectives and policies of the District Plan and represents inappropriate subdivision and development within an Outstanding Natural Landscape.
47. For those reasons, the Trust respectfully submits that consent should be declined.
48. In the alternative, the Panel should require a fundamentally revised, clustered and landscape-led subdivision design that better reflects the policy direction of the Plan and the nationally important values of ONL10 and provides for genuine public access consistent with s 6(d) RMA.



Dr J B Forret

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