

Resource Consent Applications for subdivision and land use for a
rural lifestyle development at Horahora Road,
Lake Karapiro

K & L Tylee

Applicant

South Waikato District Council

Consent Authority

LEGAL & OPENING SUBMISSIONS OF COUNSEL FOR THE APPLICANT

Dated: 19 October 2026

Counsel Acting:

Phil Lang
Barrister
PO Box 19 539
Hamilton
Phone: 021 870 660
Email: phil@plang.co.nz

Scope of Submissions

1. These submissions address the following issues:
 - a) Key issue – resolution of the Rural Lifestyle Zoning and the Outstanding Natural Landscape status of the application site;
 - b) Transitional provisions in the new planning legislation;
 - c) Securing performance of the proposed mitigation measures; and
 - d) Conditions.
 - e) Implementation of policy RLZ-P5
 - f) Evidence for the Laxon family and Profile Farms Limited
 - g) Evidence for the Applicant

Resolution of the Rural Lifestyle zoning and the Outstanding Natural Landscapes status of the application site

2. A key statutory provision that affects resolution of this issue is s 6 RMA.
3. The critical parts of s 6 are as follows:
 6. *In achieving the purpose of this Act, all persons exercising functions and powers under it, ...shall recognise and provide for the following matters of national importance:*
 - a) *The preservation of the natural character of...lakes and rivers and their margins, and the protection of them from inappropriate subdivision, use, and development.*
 - b) *The protection of outstanding natural features and landscapes from inappropriate subdivision, use, and development.*
 - c) *The maintenance and enhancement of public access to and along...lakes and rivers.*
 - d) *The relationship of Māori and their culture and traditions with their ancestral lands, water, sites, waahi tapu and other taonga.*

4. A key factor in the implementation of s 6 in this case is the determination of what types of subdivision, use and development are appropriate or inappropriate on the application site.
5. The meaning of “inappropriate” in the context of s 6 RMA was considered by the Supreme Court in *Environmental Defence Society Inc v The New Zealand King Salmon Company Limited*.¹ In particular, at paragraphs [98]-[101]:

[98] Both pt 2 of the RMA and provisions in the NZCPS refer to protecting areas such as outstanding natural landscapes from “inappropriate” development – they do not refer to protecting them from any development. This suggests that the framers contemplated that there might be “appropriate” developments in such areas, and raises the question of the standard against which “inappropriateness” is to be assessed.

[99] (NZCPS considerations)

[100] The scope of the words “appropriate” and “inappropriate” is, of course, heavily affected by context. For example, where policy 8 refers to making provision for aquaculture activities “in appropriate places in the coastal environment”, the context suggests that “appropriate” is referring to suitability for the needs of aquaculture (for example, water quality) rather than to some broader notion. That is, it is referring to suitability in a technical sense. By contrast, where objective 6 says that the protection of the values of the coastal environment does not preclude use and development “in appropriate places and forms, and within appropriate limits”, the context suggests that “appropriate” is not concerned simply with technical suitability for the particular activity but with a broader concept to that encompasses other considerations, including environmental ones.

¹ *Environmental Defence Society Inc v The New Zealand King Salmon Company Limited* [2014] NZSC38.

[101] We consider that where the term “inappropriate” is used in the context of protecting areas from inappropriate subdivision, use or development, the natural meaning is that “inappropriateness” should be assessed by reference to what it is that is sought to be protected. (emphasis added)

[Citation of s 6(b)]

A planning instrument which provides that any subdivision, use or development that adversely affects an area of outstanding natural attributes is inappropriate is consistent with this provision.

6. To inform the meaning of “inappropriate” in the present context, consideration is to be given to the attributes of the ONL that are to be protected.
7. There are a number of relevant planning instruments that might assist in determining what is sought to be protected. particularly the Waikato Regional Policy Statement, Te Ture Whaimana O Te Awa O Waikato and the South Waikato District Plan. Mr Moule’s analysis of those documents identifies references in the District Plan to specific values that ONL status of the Waikato River seeks to protect. Policies NFL – P4, P5 and P6 address ONL values generally and the ONL status of the Waikato River specifically:

NFL-P4

*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.*

NFL-P5

The effects on the **cultural and spiritual relationships of Raukawa and the Te Arawa River Iwi as Tangata Whenua with the outstanding**

natural features and landscapes identified, in the district, shall be recognised and provided for in considering resource consent applications for *subdivision*, use, and *development*.

NFL-P6

To implement the Objectives of the Vision and Strategy for the Waikato River by managing *subdivision* and land-use within areas with natural values and located within the River catchment in a way that restores and protects the health and wellbeing of the Waikato River, **by identifying the Waikato River as an Outstanding Natural Landscape**

(Bold type emphasis added)

8. The Applicant's planning witness Mr David Moule examines the consistency or otherwise of the Applicant's proposal against the relevant planning instruments, including those specific policies, in paragraphs 7.3-7.26 of his primary evidence. He draws the conclusion that the Applicant's proposal as currently formulated responds positively to the relevant matters raised in those planning instruments. It would be reasonable conclude, if those assessments are accepted, that the Applicant's proposal is not "inappropriate" in terms of s 6(b) RMA.
9. The evidence of the Applicant's landscape expert Rebecca Ryder also addresses the provisions within the South Waikato District Plan that set out the considerations for design and approval of Rural Lifestyle subdivision and development and the way in which the Applicant's proposal responds to the values of the ONL at the application site. The conclusion drawn by Ms Ryder is that the proposal responds appropriately to those values, and places particular emphasis on the natural values of the ONL of the Waikato River and its margins².
10. These analyses approach the issues raised by s 6 RMA and by the RL Zoning and ONL overlay, in a way that is consistent with the Supreme Court's approach in *King Salmon* and draw conclusions that are favourable to the application.

² Evidence R Ryder paragraph 38.

11. The other matters of national importance identified in s 6(a) and (e) are also addressed by the witnesses listed above, so far as is currently possible without the benefit of detailed mana whenua input, other than the signing of the Memorandum of Understanding with Ngati Haua and Ngati Koroki Kahukura.
12. The other relevant matter of national importance in s 6(d) is *the maintenance and enhancement of public access to and along...lakes and rivers*. The response of the Applicant's proposal to that matter of national importance is also recorded in the evidence of Mr Moule³ drawing positive conclusions.

Transitional provisions in new planning legislation

13. The Transition Period begins on 30 October 2026, activating the constraints on matters that may be considered in the consent application context. There are no material amendments to the scope of operation of the RMA at the time of this hearing. That position is reinforced by the transitional provisions in the new legislation that require applications lodged before the Transition Period to be processed under the RMA as it stood at the time of lodgement of the application. Notwithstanding the usual effects of Transition Period on the resource consent process.

NPS-HPL – applicability to the Applicant's proposal

14. The NPS-HPL does not raise any barrier to the granting of consent, as the site is located entirely within the Residential Lifestyle Zone. Implementation provision 3.5(7) in the NPS-HPL requires territorial authorities and consent authorities to apply the NPS as if references to highly production land were references to land that is zoned General Rural or Rural Production at the commencement date of the NPS. This excludes the application site that is within the RL Zone. Maps of highly productive land in the Waikato Region are not yet operative, so implementation provision 3.5(7) applies.

³ Evidence D Moule at para 6.19.

Securing performance of the proposed mitigation measures

15. The Applicant's landscape and planning witnesses and the Council's landscape peer reviewer highlight the need for the Applicant's proposed mitigation measures to be required through conditions of consent and secured through some legally effective mechanism that binds future owners of the individual Rural Lifestyle sites. The relevant conditions and security mechanisms are in two parts. The landscape mitigation and other works that are required to be carried out by the developer in the course of subdivision and development are required and secured through conditions of consent that require plantings and other mitigation works to be carried out before the issue of a certificate under s 224(c) of the Act. That is a conventional and effective mechanism common to virtually all subdivision consents. Full security is provided for completing of the required works, as the subdivision cannot be implemented through deposit of a survey plan and the issue of new titles unless those works are certified as completed by the Council.

Second, the obligations on owners of subdivided allotments to complete on-site mitigation works (including maintenance actions) will be secured by registration of consent notices over the individual title documents. This method has been selected instead of the registration of covenants against the title documents, as the consent notice process is the more appropriate for subdivision consent compliance into the future. The obligations on a title owner are enduring obligations set by consent conditions that will remain in effect and perpetuity, unless altered through a statutory process in the future.

16. Consent notices will be flagged by any search of a title document before purchase by a new owner, with the full terms of the consent notice being recorded in the consent notice itself and by reference to the relevant Management Plan that governs the particular mitigation works.

17. It is intended that the Management Plans are approved at an early stage in the subdivision process and are fixed in their content, so there can be confidence in the ongoing references to those Management Plans in the long term. Examples of consent notices that have been used in this way successfully in connection with other resource consents are attached in Appendix A to these submissions.

Conditions

18. The Applicant's proposed conditions of consent, as at the date of lodgement of the Applicant's evidence, are attached to Mr Moule's original evidence as Appendix C. A further version developed since then is attached to his reply evidence. The base document that has been used for these proposed conditions is the set of draft conditions that are attached as Appendix A to the s42A report. It is intended that there will be ongoing review and updating of these draft conditions, with each iteration of conditions being by way of tracked change annotations.

Implementation of policy RLZ-P5

RLZ-P5 Promote rural residential development only in zoned locations which:

- a) Achieve cluster development and avoids the layout of lots in a lineal pattern along roads.*

19. The only term within that policy that is defined in the District Plan is "roads". The concepts of cluster development and lineal pattern of lots are not defined, nor are those terms clarified in the issues or objectives for the Rural Lifestyle zone.
20. In determining the meaning and appropriate application of the policy, it is appropriate to take a purpose-based approach, as is generally applicable for interpretation of District Plan provisions.⁴

⁴ Beach Road Protection Society Inc v Whangarei District Council [2001] NZRMA 176.

21. The issues and objectives for the RLZ do not provide any substantial assistance in understanding the purpose of the references to cluster development and lineal pattern, but the location of both those terms within the one policy provides some assistance. It would be reasonable to interpret the objective of the policy as to encourage a layout of lots that extends back from any adjacent road, to contain some lots that are not adjacent to the road. In a roadside rural environment the purpose of the policy would most logically be linked to the character of the locality, preserving a rural experience rather than a more urbanized layout when experienced from the rural road.
22. The planning and landscape experts analyse the proposed lot layout and mitigations and express their opinions about the proposal's response that policy. The Commissioners will consider those opinions in coming to their conclusion about lot layout.
23. The part of the application site that has characteristics that are particularly important under this policy is stage 1. That part of the RLZ zoned site has a long narrow shape adjacent to Horahora Road. That shape means that any lots in stage 1 will front the road unless some or all are made particularly narrow. If the policy was to be interpreted as preventing development stages that have all lots adjoining the road, the stage 1 land would be unavailable for use for Rural Lifestyle development.
24. If the purpose of the rule is to prefer and encourage development that makes maximum use of opportunity for some lots to be unconnected with the road, and to avoid a strictly lineal pattern where than can be reasonably achieved, the application of this policy to stage 1 becomes more practical.
25. Where the shape of RLZ land is long and narrow as in stage 1, the purpose of the policy in avoiding a lineal development appearance from the road can be achieved while still achieving the RMA s 7 requirement to have particular regard to:

(b) The efficient use and development of nature and physical resources.

26. The RLZ land within stage 1 can be made available for appropriate rural lifestyle development if the appearance of anyone passing along the road is not of a repetitive linear series of dwellings, but a form of development that presents limited views of entrances, formed access and dwellings, through carefully selected access points and routes, well considered planting and appropriate building design requirements. Those matters are incorporated in the Applicant's proposal, as explained by Ms Ryder (landscape) and Mr Moule (planning).
27. The RLZ land within stages 2 and 3 enable more traditionally clustered development, with many lots unconnected with Horahora Road and with use of natural landform and vegetation to achieve the more traditionally clustered outcome.
28. Mr Bray proposes a form of development that he believes to be more aligned with the concept of a clustered development, but close examination of it reveals a very similar outcome to the Applicant's proposal.

Evidence for the Laxon family and Profile Farms Limited

29. These submitters seek to have conditions imposed that require both consent notices and covenants to secure outcomes that have been addressed in agreements reached between the Applicant and those submitters. The solution proposed in the agreements, and proposed still by the Applicant, is to use consent notices to require specified mitigation measures to be put in place and maintained.
30. That approach is appropriate as the consent notice conditions address long term effects mitigation. The potential effects are matters of general public interest, for users of public places along Horahora Road, the River, the esplanade strip and the surrounding locality generally. Those public benefits are best preserved by requiring consent notices to be registered against the land titles, which are capable of enforcement by the Council. There is no legal need or practical benefit to be obtained from also requiring covenants that would be in favour of particular landowners or occupiers,

when the effects issues will be adequately addressed by the consent notices.

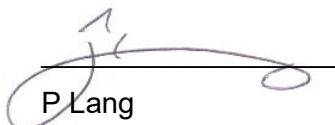
31. The agreements with the submitters, recorded in the signed agreements at Appendix 2 to Mr Moule's reply evidence, are for consent notices unless they are unavailable for some reason. There has been no change to those agreements since they were signed and no further issue raised by the submitters with the Applicants. The agreements remain binding and some explanation should be provided about the proposed departures from them.
32. I understand from a more recent conversation that the submitters will clarify at the hearing that the intended outcome is to use consent notices to secure the effects mitigations and that the option of covenants in favour of particular landowners is only as a backup if consent notices are not an available option.

Evidence for the Applicant

Evidence will be presented by:

Mr and Mrs Tylee; (the Applicants);
Rebecca Ryder (Landscape)
Gerry Kessels (Ecology);
Judith Makinson (Traffic);
John Male (Stormwater);
Dave Moule (Planning)

Dated: 19 October 2026

A handwritten signature in blue ink, appearing to be 'P Lang', written over a horizontal line.

Counsel for the Applicant